

## Office Memorandum • UNITED STATES GOVERNMENT

TO: DIRECTOR, FBI

DATE: January 6, 1958

FROM: SAC, LOUISVILLE (100-1756)

SUBJECT: AMERICAN CIVIL LIBERTIES UNION  
IS - C

Transmitted herewith is the original and one photostatic copy of a clipping from the Louisville Times, Louisville, Kentucky, dated December 13, 1957, reporting that the Kentucky Civil Liberties Union has criticized procedural shortcuts in Kentucky courts, the Kentucky Habitual Criminal Act, and publicity procedures of the "Federal Government."

This is furnished for information only.

② - Bureau (Enc 1-2) (RM)  
1 - Louisville (100-1756)

GWH:ah

(3)

EX-131

RECORDED-92

LSI

INDEXED-92

EX-131 REC'D. BY LN 31

RECEIVED

61-190-681

JAN 9 1958

60 JAN 15 1958

# Civil Liberty Abridgement Is Charged

## Heavy Court Dockets Blamed

Justice is sacrificed to convenience and custom in some Kentucky courts, in the view of the Kentucky Civil Liberties Union.

At its annual meeting last night, the union was especially critical of practices in some of the lower courts.

"Procedural short cuts, such as systematic denial of jury trial in quarterly and police courts, are employed as practical means of enabling the courts to cope with the huge volume of litigation," the union reported.

Other shortcomings cited were:

1. "Important procedural rights, such as the right of effective representation by counsel, are not equally available to rich and poor."

2. "The practice of filing cases away... results in abridgement of the right to a speedy trial."

### Recommendations Adopted

The organization met last night at the University of Louisville and adopted recommendations of a legislative committee that the Kentucky Habitual Criminal Act be amended, and that trial commissioners be prohibited from hearing criminal cases.

Commissioners are appointed by judges to share the work loads in certain courts. In Louisville, commissioners conduct juvenile, traffic, domestic relations, night and quarterly courts.

"The lonely responsibility which sits on the shoulders of every judge is an essential guarantee of sober and considerate justice," the union report stated. "He should not be permitted or required to shift or share that responsibility."

### Changes Proposed

With respect to the Habitual Criminal Act, the group recommends that it be amended to provide that "the accused first be tried solely on the felony charge." "Only if he is convicted on that charge should his previous record be brought to the attention of the jury for its consideration in the fixing of sentence," it said.

The act now provides life imprisonment for any person convicted of three felonies. The civil liberties group is opposed to the practice of placing habitual criminal charges against a defendant until after the third conviction.

The principal speaker last night was Jeffrey Fuller, an assistant director of the American Civil Liberties Union, who\_twitted the Federal Government for switching from a policy of "secrecy for the sake of secrecy" to "publicity for the sake of publicity." He was referring to the publicity attending recent satellite-launching efforts.

Fuller presented a life membership certificate in A.C.L.U. and K.C.L.U. to Gorver G. Sales, Louisville attorney, for 30 years service to the cause of civil liberties.

The following Kentucky Union directors were elected:

Dean Julia Allen, of Berea; Dr. Louis Kesselman, Louisville; Patrick S. Kirwan; the Rev. Wilfred B. Myll; Dr. Maurice Rabb; Alexander W. Erfen; and Carl L. Wedekind, Jr., all of Louisville; J. E. Reeves and Dr. R. M. Hensley, Lexington.

51.

51.

Re: ACLU

Bufile No. 100-1756  
LS File No. 100-1756

Courier-Journal  
Louisville Times  
Louisville, Ky.

Date 12-13-57

61-196-631

ENCLOSURE

AMERICAN CIVIL LIBERTIES UNION

**NATIONAL OFFICE**

JOHN HAYNES HOLMES  
*Honorary Chairman, Board of Directors*



170 FIFTH AVENUE  
NEW YORK 10, N. Y.

**ERNEST ANGELL**  
*Chairman, Board of Directors*  
**E. B. MacNAUGHTON**  
*Chairman, National Committee*  
**RALPH S. BROWN, Jr.**  
**ELMER RICE**  
**NORMAN THOMAS**  
*Vice-Chairmen, Board of Directors*  
**EDWARD J. ENNIS**  
**OSMOND K. FRAENKEL**  
**BARENT TEN EYCK**  
*General Counsel*  
**B. W. HUEBSCH**  
*Treasurer*  
**PATRICK MURPHY MALIN**  
*Executive Director*

In the rush to overtake the Soviet's satellites, there is grave danger to America's civil liberties. Already a top government leader has said that we may have to "give up small marginal freedoms".

Such thinking can easily gather momentum. It is, in fact, largely responsible for the nation's present predicament. To quote a distinguished member of ACLU's National Committee, Henry Steele Commager:

"In the name of security, we denied scientists access to essential information, raised barriers of secrecy between ourselves and our allies, penalized scholars who had made distinguished contributions to our scientific leadership, and, by thus stifling civil liberties, created an atmosphere in which it was difficult for scientists to work. McCarthyism is now thoroughly discredited, but some of its poison still affects our thinking."

The ACLU has always fought and will continue to fight any infringement on the civil liberties of Americans. We do this not only out of devotion to the Bill of Rights, but out of the recognition that only a free society is a secure one.

The Union defends human rights on many fronts -- as indicated in the enclosed leaflet, Targets for 1958, and in NOR SPEAK WITH DOUBLE TONGUE, the ACLU'S 37th Annual Report which should be in your hands by now.

Rowland Watts, our staff counsel, and I have just returned from a five-week organizing trip through twelve Southern states. The South, a good example of a society which is insecure (for the very reason that so many of its citizens are deprived of their basic rights) will be a major ACLU target area in 1958. 61-190 - 68

The ACLU is ready -- if we can end our fiscal year January 31 in the black, and with enough more to meet the challenges ahead. Our generous members have regularly made January our biggest income month. This year your generosity will help in the biggest job the Union has ever tackled.

If you can send \$7 -- or multiples of \$7 -- in answer to this Appeal, we can advance our frontiers in 1958. Whatever your contribution, large or small, use the postage-free envelope enclosed above to mail it today.

Sincerely,

Patrick Murphy Malin  
Executive Director

P.S. Remember: January 31st closes our fiscal year. We need your check before then.

check before the  
5.7 JAN 13 1964

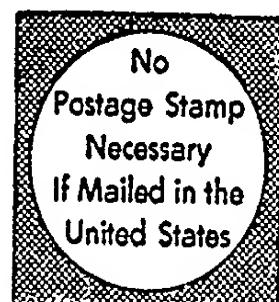
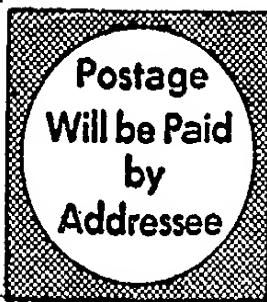
PULL  
HERE

FROM



New York 8, N. Y.

b6  
b7C



**BUSINESS REPLY ENVELOPE**

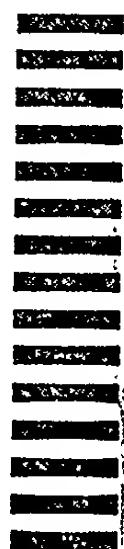
First Class Permit No. 7031, New York, N. Y.

**AMERICAN CIVIL LIBERTIES UNION**

*National Office*

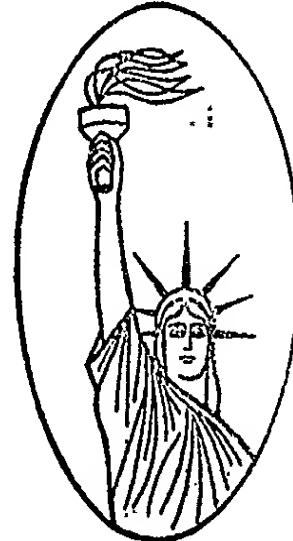
**170 FIFTH AVENUE**

**NEW YORK 10, N. Y.**



"... in all the length and breadth of this land the only organization exclusively and continuously dedicated to the protection and preservation of our basic freedoms is the American Civil Liberties Union . . . What counts is that night and day, year in and year out, it is on the firing line for the American heritage of freedom. Thus it has performed and is performing an enormously useful, if not an absolutely necessary function; and all of us are its debtors. . . ."

— JOSEPH O'MEARA  
Dean, Notre Dame Law School



Here is my \$..... response to the 1958 SPECIAL FUNDS APPEAL so that the ACLU can keep up its fight for civil liberties on all fronts throughout the coming year.

(No stamp or signature needed. Simply enclose donation, seal and mail.)

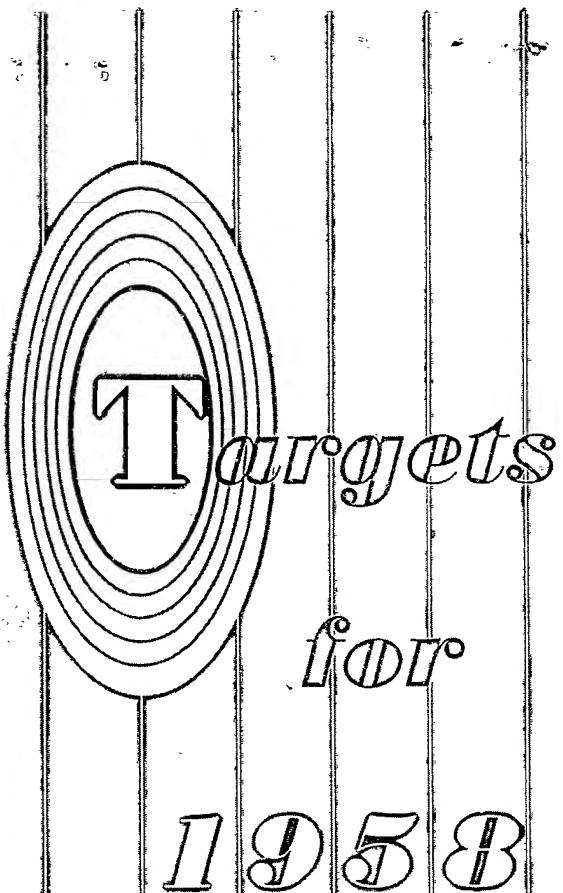
REMEMBER: The Union's integrated affiliates, whose need for funds is also great, will benefit from your generosity. If you live in any of the following states or city areas, your contribution will be divided with your ACLU branch just as your membership dues are regularly shared —

Colorado  
Connecticut  
Illinois  
Indiana

Iowa  
Kentucky  
Louisiana  
Maryland  
Massachusetts

Minnesota  
Ohio  
Oregon  
Pennsylvania  
Wisconsin

Cities and Suburban Areas  
Buffalo      New York  
Detroit      Philadelphia  
Lansing      St. Louis  
Miami



AMERICAN CIVIL LIBERTIES UNION  
170 Fifth Avenue • New York 10, N.Y.

61-190-682  
ENCLOSURE

January 9, 1958

Mr. [redacted]

b6  
b7C

Cairacas, Venezuela

94581

Dear Mr. [redacted]

RECORDED 61-190-683

INDEXED-46

RECORDED

Your letter dated December 28, 1957, with  
enclosure, has been received.

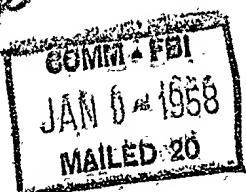
EX-111

Although I would like to be of service, information  
in FBI files is confidential and available for official use only.  
I would like to point out also that this Bureau is strictly a fact-  
gathering agency and does not make evaluations or draw  
conclusions as to the character or integrity of any organization,  
publication or individual.

I know you will understand the reasons for  
these rules and will not infer either that we do or that we do  
not have information pertaining to the group you named. I can  
assure you, however, that the data you furnished and your  
observations will be made a matter of record in our files.

Sincerely yours,

John Edgar Hoover  
Director



NOTE: The Bureau has never investigated the American Civil Liberties  
Union. ~~Q 23 11 1958~~

Address on envelope being utilized in this case rather than  
that in the letter since the letter was postmarked in Venezuela.

DCL:jcs

52 JAN 1 1958 (C)C

MAIL ROOM

5-1 (Rev. 4-17-56)

Date: Jan. 23, 1958

To: SAC, New York

~~Emergency~~ → Dimetan FDT 1461-190

Attention: Central Research Section

Subject: American Civil Liberties Union  
Internal Security C.

## American Civil Liberties Union

Publication "Civil Liberties"

Advise Bureau re status of subscription. (or donation -  
*when does it expire?*)

Not necessary to forward issues listed below:

Forward following issues, by routing slip:

Nov. 1957 issue #156; Jan 1958 issue  
#157. Article Dec 1957 not published?  
Advise. / Ghans.

(over)

1968

Central Park Zoo

(Place your reply on this form and return to the Bureau.  
Note on the top serial in the case file the receipt and  
acknowledgment of this communication.)

61-1  
NOT RECORDED  
8 FEB 4 1951

File 61-190

64 FEB 4 1959

DO-6

OFFICE OF DIRECTOR  
FEDERAL BUREAU OF INVESTIGATION  
UNITED STATES DEPARTMENT OF JUSTICE

FBI is mentioned on page 3.

RECEIVED  
FEB 15 1958  
FEDERAL BUREAU OF INVESTIGATION  
UNITED STATES DEPARTMENT OF JUSTICE

ENCLOSURE

Mr. Tolson \_\_\_\_\_  
Mr. Boardman \_\_\_\_\_  
Mr. Belmont \_\_\_\_\_  
Mr. Mohr \_\_\_\_\_  
Mr. Nease \_\_\_\_\_  
Mr. Parsons \_\_\_\_\_  
Mr. Rosen \_\_\_\_\_  
Mr. Tammy \_\_\_\_\_  
Mr. Trotter \_\_\_\_\_  
Mr. Jones \_\_\_\_\_  
Mr. Clayton \_\_\_\_\_  
Tele. Room \_\_\_\_\_  
Mr. Holloman \_\_\_\_\_  
Miss Holmes \_\_\_\_\_  
Miss Gandy \_\_\_\_\_

67-190 685  
NOT RECORDED

18 JAN 16 1958

87

178/12

# CIVIL LIBERTIES



MONTHLY PUBLICATION OF THE AMERICAN CIVIL LIBERTIES UNION

NUMBER 157

JAN. 1958

## HISTORIC BILL

Early in December New York's City Council adopted the nation's first law against racial and religious discrimination in privately-owned housing. Introduced early in 1957 by Councilmen Earl Brown, Stanley Isaacs and Joseph T. Sharkey, the historic measure was backed from the start by a large number of civic organizations—including the NYCLU. In November the bill was endorsed by Cardinal Spellman from the pulpit of St. Patrick's Cathedral.

## Annual Report Out; You Sending Check?

The 39,000 members of the national ACLU and its integrated affiliates will each receive three pieces of mail from the Union early this month:

*First*, NOR SPEAK WITH DOUBLE TONGUE, our 112-page 37th Annual Report. (Please note that the publication date for the report is January 13; most members should get their copies long before the press.)

*Second*, this January CIVIL LIBERTIES.

*Third*, the Union's 1958 Special Funds Appeal which will be accompanied by a new leaflet, Targets for 1958, setting forth what we expect will be the ACLU's chief activities during the coming year.

### Small or Large

The response to this appeal will determine whether the Union can end the 1957-58 fiscal year on January 31 firmly in the black and whether it can meet the challenges facing civil liberties in the coming year.

A contribution—small or large—from you and from every member will mean a successful 1957-58 and a good start on 1958-59.

### Henry Steele Commager

Also being mailed around New Year's Day are one hundred thousand letters from Henry Steele Commager setting forth the Union's vital role in the Sputnik era and urging the recipient to join the ACLU. If you should get one of these, *please keep in mind that it would cost the Union far more to see that no person who is now on the roster got one of the Commager appeals than it does to mail such duplicates*. Rather than throw Professor Commager's letter in the wastebasket, you could help by passing it on to someone you think would be interested in joining.

## North Little Rock Registration Ordinance Challenged by ACLU

The American Civil Liberties Union on November 29 challenged as violating the First Amendment freedom of association a local ordinance in North Little Rock, Arkansas, which requires certain organizations to register and disclose names of members.

The Union's Executive Director, Patrick Murphy Malin, filed an affidavit with Percy H. Machin, City Clerk of North Little Rock, charging that the ordinance was unconstitutional under the First and Fourteenth Amendments to the United States Constitution and under the Arkansas Constitution. The ordinance grew out of the Little Rock school integration controversy; in addition to

the ACLU, organizations ordered to register under it include the NAACP, the Urban League, and three local North Little Rock organizations apparently in favor of carrying out the Supreme Court's school desegregation decisions.

### Designed to Harass

In refusing to submit a list of its members and contributors, Malin said that the Union believed the ordinance "is designed to harass those residents of North Little Rock who hold that, under our form of government, the United States Supreme Court is the final interpreter of the meaning of the federal Constitution, and that its decisions and all inferior court decrees made pursuant thereto must be obeyed."

Malin did supply the North Little Rock City Clerk with the same information about the ACLU which is available to anyone in the Union's Annual Report; name, headquarters, officers, governing bodies, financial statement of income and expenditure, including a list of contributors of \$200 and up by name and state. "The list of such contributors is included in this affidavit," Malin said, "because it is part of the public record, annually published. Its inclusion is not an admission that the City Council of North Little Rock is legally entitled to this information concerning these or any other contributor to the organization."

### Organizational Deficiency

The affidavit noted that the ACLU did not come within the ordinance's requirements in that "we regrettably admit that we are not operating or functioning within the City of North Little Rock. But we hope that this organizational deficiency will be corrected in the not too distant future." The Union pays no salary or other compensation to anyone in Arkansas. Mrs. Frances Eliot, the ACLU's Arkansas State Correspondent, is, as stated in the Annual Report, an unofficial representative of the Union. The original order to register was served on Mrs. Eliot, a resident of North Little Rock, apparently because she had spoken up at a town meeting when the ordinance was being considered.



## Marine General Hailed for Action in Navy Brig Case

The ACLU last month commended the Marine Corps for ordering general courts martial for sixteen marines accused of maltreating prisoners at the Navy brig in Japan.

Making clear that it took no position on the accuracy of the charges, the Union congratulated General Randolph McCall Pate, Commandant of the Marine Corps, on his prompt action in the case.

The ACLU has for long kept watch on alleged brutality in the Marine Corps. Last Summer it compiled and submitted to Congress a report on charges of brutality at the Corps' Parris Island base.

61-190-685-1

## CIVIL LIBERTIES

NUMBER 157, JANUARY 1958

Published monthly, except  
in July and August, by the  
AMERICAN CIVIL LIBERTIES UNION  
170 Fifth Avenue, New York, N.Y.  
Ernest Angell

Chairman, Board of Directors

John Haynes Holmes  
Honorary Chairman, Board of Directors

E. B. MacNaughton  
Chairman, National Committee

Ralph S. Brown, Jr.  
Elmer Rice  
Norman Thomas

Vice-Chairmen, Board of Directors

Edward J. Ennis  
Osmond K. Fraenkel

Barent Ten Eyck

General Counsel

Katrina McCormick Barnes

Secretary

B. W. Huebsch

Treasurer

Patrick Murphy Molin

Executive Director

Entered as second-class matter June 20, 1938, at the Post Office in New York, N.Y., under the Act of March 3, 1879. Re-entered as second-class matter October 11, 1949, at the New York Post Office under the same Act. Subscription: by membership at \$2, \$5, \$10, \$25 and up, of which 50¢ is for one year of CIVIL LIBERTIES.

Jeffrey E. Fuller, Editor

## Thirty-four States Issue Proclamations On 166th Anniversary of Bill of Rights

The 166th anniversary of the final ratification of the First Ten Amendments was officially marked by thirty-four states on December 15th—Bill of Rights Day.

The model proclamation, suggested by the ACLU to the governors of all forty-eight states and closely followed by most of those who marked the day, said that the "right of freedom of speech, press, assembly, association and religious worship; the right of due process under law; and equal treatment under law are a priceless heritage which must be constantly safeguarded. It is our right and duty to strive toward the fullest application of these freedoms for our neighbors as well as for ourselves in our daily lives."

This is the fourth year in which a national non-partisan effort has been made to persuade all governors to proclaim Bill of Rights Day in their respective states. In 1950, 1952, and again in 1957 the drive was sponsored by the ACLU. In 1956 the Freedom Agenda Committee of the Carrie Chapman Catt Memorial Fund conducted the campaign. In 1950

fifteen governors issued proclamations, in 1952 twenty-nine, and in 1956 thirty-one.

The thirty-four states whose governors issued proclamations in December are: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, West Virginia, Wisconsin.

## Reinstatement Asked For \$51,750,000 Suit

In a brief filed with the U.S. Supreme Court in October, the ACLU asked for reinstatement of a damage suit totalling \$51,750,000 against nineteen motion picture studios and distributors and against members of the House Un-American Activities Committee. The case was brought by twenty-three Hollywood actors, writers and technicians—including such well-known figures as Howard Da Silva, Anne Revere and Paul Jarrico—who claim they were blacklisted because they had invoked the Fifth Amendment in testifying at the Committee's hearings on alleged Communist influence in Hollywood.

This is the first time the U.S. Supreme Court has been asked to consider the possible personal liability of House Committee members and staff.

The case concerns a motion to dismiss the original complaint; no trial on the merits of the factual allegations has yet been held, nor has their accuracy been determined.

Basing its argument on allegations that arrangements had been made to deny employment to persons invoking the Fifth Amendment, the ACLU said that such "coercion against exercise of the privilege is particularly severe, with impairment of the Constitutional guarantee in consequence, because invocation of the privilege is treated as an absolute and unescapable bar to employment in the motion picture industry."

the rising wants of the poor in the house of the world. And always to stand guard on the Bill of Rights.

In the rush to perfect weapons and amid the urgency of a power crisis, we must not forget what this country means.

It means that here a man is free to think as he pleases and to say what he thinks, free to worship and to read and to publish, free to assemble; that he is entitled to a fair trial—that he is in short protected against the arbitrary exercise of government's power.

A head-long arms race is assuredly dangerous to peace. It may also be dangerous to freedom. Let us work and spend to protect ourselves for survival's sake—but let us make sure we survive free.

## FREEDOM AND SURVIVAL

BY ADLAI E. STEVENSON

*Excerpts from a speech given by Governor Stevenson in Chicago on December 16 at an Illinois Division ACLU luncheon commemorating the 166th anniversary of the ratification of the Bill of Rights.*



At a turning point in human history, at the beginning of a new epoch in the history of humanity, at the dawn of the space age when we are reassessing all our policies, beliefs, programs, and are picking ourselves up, it seems to me a particularly appropriate time to reflect upon the Bill of Rights and its past, present and future meaning for us. With America now vulnerable from abroad for the first time in our history, we are, I suppose, in for more tests and trials of our national reason and equilibrium, and the patience record isn't very good.

Raising the level of reverence for our civil liberties, and their inviolability in our thinking, seems from past experience to be very uncertain. They seem often to be not the last but the first victims of emotional convulsion.

The threat to freedom which I sense today is nothing very concrete. It is simply a vague widely held feeling that perhaps we must choose between freedom and survival, and that obviously the choice must be survival.

I say no such choice confronts us. I say the choice is among various national policies to insure national survival—and that as respects freedom we have no choice at all but to maintain it more vigilantly and vigorously than ever.

During times of stress, the pressure against dissent and for conformity becomes greater.

But the right to dissent, to speak freely, is a powerful weapon in the forging of wise national policy—including foreign policy I think! Our civilization is built on non-conformity. We must defend the right to dissent and non-conformity. I think we believe with Benjamin Franklin that "They that can give up essential liberty to obtain a little temporary safety deserves neither liberty nor safety."

I would add this thought: Sometimes in our zeal we become involved in battles that are quixotic, or in situations where no civil liberties issue really lies, and there is a very real question in my mind whether such endeavors, however well intentioned, serve well our basic purposes. Or do they perhaps lend ammunition to the enemies of liberty—to the people with authoritarian hearts or conformist heads?

So I would suggest to you, who are so often on the firing line, that in such times as these we would serve our cause well to hew to the main line—the protection of the individual whose essential liberties are threatened by the state—and perhaps have a care that we do not fall into quixotic postures that rob our efforts of effectiveness.

What then are the tasks ahead? First, to catch up in the technological race; then in order to help us export freedom around the world to devise bold new programs to meet

## Indiana Civil Liberties Union Is Again Denied Access to War Memorial Building

For the third time, the Indiana ACLU has been denied use of the state's World War Memorial as a meeting place. The Indiana Civil Liberties Union requested use of the building for a Bill of Rights Day celebration on December 15. The Rt. Rev. John P. Craine, Bishop Coadjutor of the Protestant Episcopal Church in Indianapolis, was to have been the chief speaker.

Judge Clarence McNabb, chairman of the World War Memorial Commission, said that ICLU would "desecrate this sacred soil" and charged that the group's parent body, the ACLU, devoted 90% of its efforts to the defense of Communists.

The ICLU has twice before in recent years been denied access to the War Memorial: in 1953 when the ACLU affiliate was organized, and then in 1954 when it offered Paul Höfmann, the Hoosier president of Studebaker, as speaker.

Rowland Allen, a member of the ICLU board, termed last month's denial "wholly un-American" and asked how an Episcopal bishop could "possibly have said anything that would, as you say, 'desecrate' this sacred soil?"

This year, Indiana's Governor Harold W. Handley proclaimed Sunday, December 15, as Bill of Rights Day; he had also told Rowland Allen that he hoped the ICLU would succeed in its attempt to meet in the War Memorial, asking Allen to contact him in case of any difficulty. After McNabb and the Commission had ruled against the ICLU, Handley said: "They've made their decision. There's nothing I can do about it."

### Jehovah's Witness Airman Wins Honorable Discharge

A Jehovah's Witness airman who was court-martialed for refusing to salute an Air Force officer has been released from custody and given an honorable discharge—but without veterans' benefits. The J-W convert, Orville Cupp, 20, of Denver, was imprisoned a year ago at Fort Leavenworth, Kansas.

Cupp was originally sentenced to five years hard labor because he refused to salute an officer and declined to carry out his duties as a gunnery instructor. He said this conflicted with the teachings of Jehovah's Witnesses, the denomination into which he was baptized after joining the Air Force.

At a hearing in Washington, the ACLU argued that Cupp's court martial violated his freedom of religion as guaranteed by the First Amendment. It also charged that the order that Cupp train recruits in gunnery was a trap, since his commander knew the youth would not obey.

The final review board, besides granting Cupp an honorable discharge, conceded that he was "sincere in his religious beliefs." At the same time, it ruled that his First Amendment rights had not been violated and that his punishment had not been excessive.

The Indiana ACLU is considering the possibility of challenging through legal action the continued refusal to allow it to use the building. The *Indianapolis Times* asserted that the commission had "again brought shame on the memory of every Hoosier who has worn his country's uniform in war, or upheld its sacred institutions in peace."

### SOUTH JERSEY

ACLU members in three counties of southern New Jersey—Camden, Gloucester and Burlington—have formed a South Jersey Chapter of the Union's Greater Philadelphia Branch. Charles C. Thomas, a Camden attorney, has been named Chairman of the chapter whose territory is across the Delaware River from Philadelphia.

## Supreme Court's June Decisions Lead to Reversal of Many Smith Act Convictions

Convictions of Communists under the Smith Act, which one year ago numbered 114, are rapidly being appealed and reversed, as a result of last June's Supreme Court decision in the Yates-Schneiderman case, which freed five defendants and ordered a new trial for nine others.

### ACLU Position

The ACLU has fought the Smith Act ever since its enactment in 1940. It challenged its constitutionality when the law was invoked against Trotskyites, against alleged pro-Nazis during World War II, and against Communists starting in 1948. The Union opposes the Smith Act because it believes that in making advocacy of government overthrow criminal (rather than punishing overt acts of espionage or sabotage), the law violates the First Amendment's guarantee of free speech.

On the basis of the court's ruling last Spring, new trials have been granted to convicted Party leaders in Connecticut, Pennsylvania, St. Louis, Milwaukee and Denver. Also, the government has dropped its indictments against Steve Nelson and five other Pennsylvania Communists, five New England officials of the Party, and nine California Communists.

### Insufficient Evidence

In Connecticut, the Circuit Court of Appeals, in a 2-1 decision, has thrown out Smith Act convictions against five Communist leaders, on the ground of insufficient evidence. The government has asked for a re-hearing, claiming that two judges who participated in the majority ruling had "interfered with the traditional right of trial by judge and jury . . . by substituting its judgment as to the significance of certain evidence for that of the jury."

Five convicted Communists in St. Louis have won from the government admission that they should be granted new trials, on the basis of the Supreme Court ruling in the Jencks case that relevant FBI files should be made available to the defense on demand. The St. Louis ACLU had filed an *amicus curiae* brief asserting that neither the prosecution nor the defendants dealt specifically with the broad problem of preserving free speech under the First Amendment.

The Jencks decision was also the basis for the granting of a new trial to John J. Killian, Milwaukee labor leader, convicted for con-

cealing Communist Party membership.

The Denver conviction of seven Communist officials was reversed by the U.S. Tenth Circuit Court of Appeals, and a new trial ordered, on grounds that a portion of the indictment charging that the organizing of the Communist Party in Colorado had been a conspiracy under the Smith Act, was invalid because the statute of limitations had expired.

The Pittsburgh case against Steve Nelson and five others was dropped by the government after a retrial was ordered. United States Attorneys told the Court they could not successfully retry the defendants on the basis of evidence now available.

### Must Show Proof of Intent

In Philadelphia, the U.S. Court of Appeals set aside the conviction of four local Party leaders and granted new trials to five others. The court said its ruling was based on the Supreme Court's decision last June requiring that proof be shown that the defendants intended to overthrow the government by force and violence.

### Negro Conditions in Navy Improving, Reports Union

Conditions for Negroes in the Navy are improving, the ACLU reported last month, but there is much room for further improvement. This is the conclusion reached in a survey conducted for the Union by Mrs. Ruth Danenbauer Wilson to supplement an ACLU study she made in 1955.

"Practically no discrimination remains in the pattern of life on shipboard and on Navy bases," the report declares. The Union, however, that the Navy extend its policy of non-discrimination by improving the chances of Negroes for promotion.

The survey also points out that no Negro officers are on duty with the Navy Department in the Pentagon or on admirals' staffs anywhere. Mrs. Wilson emphasizes that the Navy still has no Negro officers in command of ships, although the Merchant Marine has long had a number.

Ruth Danenbauer Wilson, author of "Jim Crow Joins Up: A Study of Negroes in the Armed Forces of the United States," was born in 1887 into an old Navy family, members of which served in the War of 1812, the Civil War, the Spanish-American War, and World Wars I and II.



## CIVIL LIBERTIES around the nation

**Alabama:** The State of Alabama recently dropped its case against 89 Negroes on charges growing out of last year's bus boycott in Montgomery, when the Rev. Dr. Martin Luther King agreed to pay a \$500 fine and withdraw his appeal to the State Supreme Court.

**California:** Shades of Aldous Huxley's "Brave New World": when convicts in Tulare County's road camp go to bed at night they receive through their pillows a tape recording of a prayer-like lecture on being good which is intended to reach their subconscious minds and thus have a permanent beneficial effect on their characters.

**Florida:** The "disease of racial intolerance" is the greatest roadblock in the way of Southern progress, Florida's Gov. Leroy Collins warned the Southern Newspaper Publishers Association at its November convention in Boca Raton.

**Massachusetts:** Dr. Liston Pope, dean of Yale University Divinity School, told the Massachusetts Council of Churches recently that the church was the most racially segregated major institution in American society today.

**Georgia:** The Georgia Literature Commission has been asked in a full-page newspaper ad by two citizens of Macon to ban the Pocket Book edition of "The Dice of God" by Hoffmann Birney, as "obscene and not fit to be read by the decent people making up the population."

**Minnesota:** William A. Schaper, professor of political science dismissed for his pacifist views by the University of Minnesota during the war hysteria of 1917, died recently, leaving a \$10,000 bequest to his former University, which by 1938 had changed its attitude and named him professor emeritus.

**Georgia:** In commemoration of Lincoln's Gettysburg Address, President Eisenhower designated November 19 Equal Opportunity Day, and did so from the grounds of the Augusta National Golf Club, in the heart of what was once the Confederacy.

**Maryland:** Maryland's Board of Motion Picture Censors has announced a plan to label "as 'restricted'" movies it finds harmful for children under 16 but fit for adults.

**Texas:** Texas Technological College in Lubbock has dismissed two professors, both of whom allegedly favor integration, under circumstances which many of their colleagues on the faculty believe violate the principles of academic freedom.

**Indiana:** Indiana University's Institute of Sex Research, founded by the late Dr. Alfred C. Kinsey, won a five-year fight recently to prevent the Treasury Department from destroying as obscene a collection of books, photographs, paintings and statuettes brought to the United States from Europe and the Orient by Dr. Kinsey in 1952.

**Maine:** Television station WTWO in Bangor for the past two months has been testing on the air "subliminal" advertising techniques aimed at viewers' subconscious perception.

**California:** The California State Bar Association early in October turned down a resolution to ban Communists from practicing law in California, and then censured its author.

## Illinois ACLU Acts in Church & State Case

The Union's Illinois Division last month declared that the display of religious symbols on public school grounds—in this instance a creche and a menorah at the Lakeview High School in Chicago—violates the constitutional principle of separation of church and state.

The matter became a public issue when a Chicago alderman protested against the school officials' decision to discontinue the Christian and Jewish religious display. The issue was apparently resolved by the school principal's announcing that this year a Christmas tree would be used as the holiday decoration, rather than the symbols more closely related to particular religious faiths.

The Illinois ACLU stressed its belief in the wisdom of the First Amendment principle of separation between church and state. It argued that in Chicago, a city of many creeds, harmony could best be maintained by leaving religious exercises to the home and the church, free from state intervention.

## BOOK NOTES

PLEASE ORDER THESE WORKS FROM BOOK STORES OR PUBLISHERS, not from ACLU.

**SIMPLE STAKES A CLAIM**, by Langston Hughes. Rinehart. 191 pp. \$2.50.

*In his third collection of conversations with Harlem's latter-day Mr. Dooley, Langston Hughes confirms his reputation as an author who is successfully attacking civil rights problems with the weapon of humor.*

**THE PACIFIC DEPENDENCIES OF THE UNITED STATES**, by John Wesley Coulter. Macmillan. 1957. 388 pp. \$6.75.

*A complete and authoritative study, indispensable to an understanding of American colonial policies and their impact on the civil liberties of the many islands' inhabitants.*

**THE STATE AND SECTARIAN EDUCATION**, published by the National Education Association, 1201 Sixteenth Street, N.W., Washington 6, D.C. December 1956. 52 pp. 50¢ postpaid.

*A useful document in the important civil liberties area of church-state relations.*

JANUARY 1958 — NUMBER 157

347

Bumper'd as SECOND-CLASS matter  
170 FIFTH AVENUE, NEW YORK 10, N.Y.  
AMERICAN CIVIL LIBERTIES UNION  
In-justly and August, by the  
published monthly, except

CIVIL LIBERTIES

67-190-675

J. Edgar Hoover  
Dept. of Justice  
Washington 25, D. C.

3

Office 1

m • UNITE

GOVERNMENT

TO : Mr. Nease

DATE: January 27, 1958

FROM : M. A. Jones

SUBJECT: PATRICK MURPHY MALIN *summary*  
 EXECUTIVE DIRECTOR  
 AMERICAN CIVIL LIBERTIES UNION (ACLU)  
 170 FIFTH AVENUE, NEW YORK 10, NEW YORK

Tolson \_\_\_\_\_  
 Nichols \_\_\_\_\_  
 Boardman \_\_\_\_\_  
 Belmont \_\_\_\_\_  
 Mohr \_\_\_\_\_  
 Parsons \_\_\_\_\_  
 Rosen \_\_\_\_\_  
 Tamm \_\_\_\_\_  
 Trotter \_\_\_\_\_  
 Nease \_\_\_\_\_  
 Tele. Room \_\_\_\_\_  
 Holloman \_\_\_\_\_  
 Gandy \_\_\_\_\_

Attached is a summary dated August 21, 1952, wherein pertinent information concerning Patrick Murphy Malin is set forth on pages 5 and 6. Pursuant to your instructions, files since the date of the attached summary have been reviewed and the following high lights of Malin's relationship with the Bureau are set forth for your information.

As set forth in the attached summary, the Bureau has continued cordial correspondence with Mr. Malin, and the Director and Malin enjoy courteous and cordial exchange of letters from time to time, the most recent having been the Director's letter dated 1/20/58 to Malin expressing appreciation for his having forwarded a copy of the 37th annual report of the American Civil Liberties Union (ACLU).

Malin by letter dated September 2, 1953, to the Editor of the Washington "Evening Star" criticized an editorial appearing in this paper on Sept. 1, 1953, which claimed lack of FBI jurisdiction in a matter dealing with the mistreatment of a Virginia state prisoner. Malin pointed out the Bureau's jurisdiction and concluded that the "FBI deserves commendation for the fulfillment of its obligation to investigating alleged violations of civil rights statutes upon direction by the Justice Department." (61-190-431) The Director thanked Malin for this expression of confidence in the FBI by letter dated September 9, 1953.

Malin by letter dated 12/31/53 to the Director enclosed a copy of a letter to the Attorney General wherein the ACLU's position in regard to the Director's testimony in the Harry Dexter White case was set forth. Malin asked that he and other officers of the ACLU be granted permission to have a conference with the Director. The Director by letter dated 1/7/54 advised Malin that while the Director was always glad to see him personally and would be glad to see him in the future, Mr. Hoover saw no point in arranging to confer with a delegation of the ACLU on a matter involving policy determination beyond the Director's purview of authority. (61-190-451) It is noted here that the ACLU's criticism of the Director primarily dealt with the fact that the Director had "departed from the FBI's admirable rule against public comment on its files and activities...."

Enclosure

FBS:cag

(5) CAG

RECORDED - 48

INDEXED - 48

61-190-686

JAN 28 1958

CRIME BUREAU

63 JAN 31 1958 10 116

Jones to Nease memorandum

In June, 1955, the "New York Post" carried a story reflecting that the ACLU had disclosed that confidential FBI information is channeled to state governors for local security investigations (our responsibilities program). In discussing this matter with Mr. Morris Ernst on June 13, 1955, Mr. Nichols was told by Ernst that the ACLU group had probably obtained their information from someone in Dewey's (Governor) office and that Ernst would find exactly what was back of their releasing this information. The point the ACLU attempted to make in this controversy was that the manner in which the information had been used was subject to abuse by failure to grant hearings and other violations of due process of law. They were not ready to offer another program and expressed the fear that if the FBI did not furnish information a "number of little FBIs" would be set up in the various states. (61-190-534) We obtained the background and information concerning this controversy from Irving Ferman, the Washington representative of the ACLU who has always conducted himself in a most favorable manner regarding the Bureau.

By letter dated October 18, 1956, Mr. Malin commended the Director's introduction in the October, 1956, FBI Law Enforcement Bulletin which decried the use of FBI identification records in political campaigns. (61-190-671)

On learning of the proposed protest that was being engineered against the Bureau program of interviewing individuals on whom there was evidence of Communist Party affiliation, former Assistant Director Nichols talked with Malin on November 17, 1956, and outlined our procedures to him. Malin extended his congratulations to the Bureau for the intelligent manner in which it approached this difficult problem and stated that he could certainly see no objection to the way in which we were handling this. (100-412902-25) This same matter was discussed with Irving Ferman by Mr. Nichols on November 14, 1956. (61-190-625)

By letter dated 4/11/56 to Mr. G. Frederick Mullen, former Director of Public Information in the Department, the Director complimented Mullen on a letter he had written to Malin concerning a publication entitled "The Peoples Right to Know" which was distributed by the ACLU. Mullen had pointed out to Malin a number of inaccuracies, innuendoes and untruths which were contained in this publication. (61-190-591)

Mr. Malin was sent a copy of "The FBI Story" by Mr. Nichols on November 21, 1956. (62-102693-186X5)

The 36th annual report of the ACLU on page 27 reported that Morton Sobell had requested a new trial on the allegation that his civil liberties had been violated. The ACLU found no fault with the procedure in Sobell's trial but stated that the FBI's investigation of, or part in, the ejection of Sobell from Mexico requires further investigation by the Department of Justice. (61-190-654) The current annual report of the ACLU contains no criticism of the FBI. By letter dated October 9, 1957, the Director

Jones to Nease memorandum

expressed his appreciation to Mr. Malin for the position taken by Malin in regard to retaining the confidential character of FBI files in connection with the Little Rock school investigation. (61-190-668) A more detailed review of the 37th annual report is being prepared in Crime Records Section.

RECOMMENDATION:

For your information.

INDEXED

RECORDED

EX-126

61-190-687

January 20, 1958

5-1 to New York, 1-20-59, requesting  
Nov. 1958, Vol. III, #2 issue "Civil  
Liberties in New York 2," AMB.  
Nov. 1958, Vol. III #2 issue 2-2-59, Reprinted &  
free: AMB.

Mr. Patrick Murphy/Malin  
Executive Director  
American Civil Liberties Union  
170 Fifth Avenue  
New York 10, New York

94579

Dear Mr. Malin:

I have received your letter of January 13, 1958,  
and the copy of your organization's 37th Annual Report.

Your thoughtfulness in making this publication  
available to me is appreciated, and I am looking forward to  
reviewing its contents.

Sincerely yours,  
J. Edgar Hoover

REC'D-READING ROOM

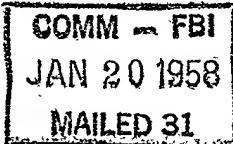
F B I

JAN 20 12 13 PM '58

NOTE: Bufiles reflect that the Director has corresponded with  
Malin in a cordial vein in the past. The American Civil Liberties  
Union is, by its own statements, a liberal but anti-Communist organization,  
which in the past has done considerable sniping at the Bureau, mainly  
regarding wire tapping; however, contact and correspondence with its  
leaders have continued on a friendly basis. A review of this report, a copy  
of which has been received from another source, is being made by  
Crime Records Section.

CBF:er  
(4)

10  
62 JAN 31 1958  
MAIL ROOM



**BOARD OF DIRECTORS**

nest Angell  
Katrina McCormick Barnes  
Daniel Bell  
Dorothy Dunbar Bromley  
Alph S. Brown, Jr.  
Sis C. Carter, Jr.  
Richard S. Childs  
William A. Delano  
Edward J. Ennis  
Torris L. Ernst  
John F. Flerty  
Osmond K. Fraenkel  
Valter Frank  
Lewis Galantiere  
Valter Gelhorn  
Julian E. Goldberg  
Louis M. Hacker  
August Hackscher  
Frank S. Horne  
B. W. Huobsch  
Sophia Yarnall Jacobs  
John Jessup  
John Paul Jones  
Dorothy Kenyon  
Dan Lacy  
Walter Millis  
Gerald Piel  
Elmer Rice  
George Soll  
Barent Ten Eyck  
Norman Thomas  
J. Waters Waring  
Howard Whiteside  
Edward Bennett Williams

**NATIONAL COMMITTEE**

Chairman  
E. B. MacNaughton (Ore.)  
Vice-Chairman Emeritus  
Bishop Edward L. Parsons (Calif.)  
Vice Chairmen  
Pearl S. Buck (Penn.)  
Prof. Albert Sprague Coolidge (Mass.)  
Prof. J. Frank Dobie (Texas)  
Lloyd K. Garrison (N.Y.)  
Dr. Frank P. Graham (U.N.)  
Palmer Hoyt (Colo.)  
Dr. Karl Menninger (Kans.)  
Loren Miller (Calif.)  
Morris Rubin (Wisc.)  
Lillian E. Smith (Ga.)  
Mrs. Sadie Alexander (Penn.)  
Thurman Arnold (D.C.)  
Bishop James Chamberlain Baker (Calif.)  
Roger N. Baldwin (N.Y.)  
Alan Barth (D.C.)  
Francis Biddle (D.C.)  
Dr. Sarah Gibson Blanding (N.Y.)  
Catherine Drinker Bowen (Penn.)  
Prof. Julian P. Boyd (N.J.)  
Van Wyck Brooks (Conn.)  
John Mason Brown (N.J.)  
Howard F. Burns (Ohio)  
Prof. James R. Caldwell (Calif.)  
Dr. Henry Soldel Canby (Conn.)  
Prof. Robert K. Carr (N.H.)  
Prof. Allan Knight Chalmers (Mass.)  
Stuart Chase (Conn.)  
Grenville Clark (N.H.)  
Dr. Rufus E. Clement (Ga.)  
Prof. Henry Steele Commager (Mass.)  
Morris L. Cooke (Penn.)  
Prof. George S. Counts (N.Y.)  
Prof. Robert E. Cushman (Tenn.)  
Elmer Davis (D.C.)  
Edwin Douglas (N.Y.)  
Rev. Frederick May Eliot (Mass.)  
Prof. Thomas H. Eliot (Mo.)  
Walter T. Fisher (Ill.)  
James Lawrence Fly (Fla.)  
Rev. Harry Emerson Fosdick (N.Y.)  
Prof. Ralph P. Fuchs (Ind.)  
Prof. Willard E. Goslin (Tenn.)  
Prof. Martin DoW. Howe (Mass.)  
Incy Howe (N.Y.)  
Robert M. Hutchins (N.Y.)  
Ralph W. Johnson (Md.)  
Dr. Mordecai W. Johnson (D.C.)  
Percy L. Julian (Ill.)  
Mes Kerney, Jr. (N.J.)  
James H. Kizer (Wash.)  
John A. Lapp (Ill.)  
Agnes Brown Leach (N.Y.)  
Lerner (N.Y.)  
Robert S. Lynd (N.Y.)  
(Robert Mathews (Ohio))  
Silvian C. McIntosh (N.Y.)  
Alexander Meiklejohn (Calif.)  
Key C. Maserov (N.Y.)  
Ed R. Murphy (Iowa)  
J. Robert Oppenheimer (N.J.)  
Opp G. Bromley Oxnard (D.C.)  
Key Parkman (Mass.)  
Key G. Patton (Colo.)  
Philip Randolph (N.Y.)  
Roper (N.Y.)  
Nevin Sayre (N.Y.)  
Arthur Schlesinger, Jr. (Mass.)  
John Schlossberg (N.Y.)  
Edward J. Sparling (Ill.)  
George R. Stewart (Calif.)  
Dorothy Tilly (Ga.)  
Edward C. Tolman (Calif.)  
John W. Waymack (Iowa)  
Weigel (Calif.)  
E.L. White (Kans.)  
Williams (Ala.)  
Jamin Youngdahl (Mo.)

**AMERICAN CIVIL LIBERTIES UNION**

170 FIFTH AVENUE, NEW YORK 10, N. Y.

Founded 1920

ORegon 5-5990

Incorporated

Ernest Angell  
Chairman, Board of Directors

Ralph S. Brown, Jr.  
Elmer Rice  
Norman Thomas  
Vice Chairman

Edward J. Ennis  
Osmond K. Fraenkel  
Barent Ten Eyck  
General Counsel

Katrina McCormick Barnes  
Secretary  
B. W. Huobsch  
Treasurer

John Haynes Holmes  
Honorary Board Chairman

Alan Roitman, Assistant Director  
Jeffrey E. Fuller, Assistant Director  
Louis Joughin, Assistant Director  
Margret R. Bloomer, Administrative Assistant

Patrick Murphy Malin, Executive Director

Rowland Watts, Staff Counsel  
Irving Ferman, Washington Office Director  
Roger N. Baldwin, Adviser, International Work  
Marie M. Runyon, Membership Secretary

January 13, 1958

94580

The Honorable J. Edgar Hoover, Director  
The Federal Bureau of Investigation  
The Department of Justice  
Washington, D.C.

Dear Sir:

The American Civil Liberties Union has published its 37th Annual Report covering the period from July 1, 1956 to June 30, 1957.

I realize that the pressure of your duties makes it impossible for you to read all the material which reaches your office, but I do want you to have a copy of the report. Knowing of your deep interest in civil liberties, which are of intrinsic importance in our democracy, I hope you or a member of your staff will find it possible to read the detailed sections of the report and the introduction which discusses the general state of civil liberties.

We shall be most grateful for any comment you may care to make.

Yours sincerely,

Patrick Murphy Malin

Patrick Murphy Malin  
Executive Director

ENCLOSURE EX-146

enclosure

RECORDED

61-180-687

EXP. PROC. 18 JAN 30 1958

JAN 14 1958

EX-146

ack

CBF

1/20/58  
nmqWITH ORGANIZED AFFILIATES IN TWENTY STATES  
AND 700 COOPERATING ATTORNEYS IN 300 CITIES OF 47 STATESJAN 27 1958  
FBS

# NEWS RELEASE

AMERICAN CIVIL LIBERTIES UNION, 170 FIFTH AVENUE, NEW YORK 10, N.Y.

E. B. MAC NAUGHTON  
Chairman  
National Committee

ERNEST ANGELL  
Chairman  
Board of Directors

EDWARD J. ENNIS  
OSMOND K. FRAENKEL  
BARENT TEN EYCK  
General Counsel

PATRICK MURPHY MALIN  
Executive Director

ORegon 5-5990

Alan Reitman, Assistant Director  
In Charge of Public Relations

January 2, 1958

**EDITORS NOTE:** BECAUSE OF THE IMPORTANCE OF THE REPORT, THIS RELEASE IS BEING MAILED SEVERAL DAYS IN ADVANCE OF THE PUBLICATION DATE. WE HOPE THIS EXTRA TIME WILL ENABLE THE REPORTER ASSIGNED TO THE STORY TO READ THE REPORT AND RAISE ANY QUESTIONS WITH US BY TELEPHONE OR WIRE.

FOR RELEASE: MONDAY A.M. NEWSPAPERS, JANUARY 13, 1958

(ADVANCE) NEW YORK, N. Y., JAN. 12,--The United States urgently needs a security system that will not hamper technological progress in this age of guided missiles and earth satellites, the American Civil Liberties Union declared today.

The government can retain the full services of scientists, technicians, engineers and administrative executives for more rapid invention and development work only if it permits them to operate in a climate of freedom, the Union warned.

In its 1957 annual report reviewing civil liberties gains and losses in the areas of free expression and association, equality before the law and due process, the ACLU linked maintenance of civil liberties to ways of insuring that America will remain dominant in scientific fields.

"Our national defense," asserted executive director Patrick Murphy Malin in an introduction to the report, "demands that a host of the most competent citizens the country possesses should be enlisted for the duration, in all parts and at all levels of our government; and they can't be got and kept if they feel they are being scrutinized as potential traitors."

A companion need, he reminded, is for the United States to maintain a single standard for civil liberties -- at home and abroad -- in order to advance the cause of democracy the world over.

The Union recognized that international peace and freedom, as well as America's security, are in "much greater danger" now than twelve months ago; and that as a result civil liberties may be "under intensified pressure, in the name of national security." At the same time, it found several reasons for sober optimism about the prospects for preserving civil liberties:

"Public opinion as a whole seems to have matured considerably in its understanding of which measures do -- and which do not -- really serve national security.

"The studied seriousness" of important U. S. Supreme Court decisions this year bearing on the relationship of security and individual freedoms, and of the report by the Administration-appointed Commission on Government Security, "is in sharp contrast to the hysteria and near-terror of only a few years ago."  
*347*

61-190-687

The Administration, the report continued, now is relaxing some of its security rules as applied to scientists; appears ready to have the McMahon Act amended to permit wider exchange of scientific information with our allies; and is allowing release of more information about missile developments.

"We can be cheered by another thing too," Malin commented. "The members and sympathizers of the Communist Party in this country are now a tiny and puny crew." This not only simplifies the police job of maintaining internal security, he said, but also tends to ease pressures against civil liberties.

"It is not the professionals -- for example, the FBI and the courts -- who have been most guilty of excesses," he asserted, "but the galloping amateurs -- in the legislatures, the executive agencies and the public at large. Happily for civil liberties, some of those amateurs are growing in wisdom; and the rest are now under stern warning from the Supreme Court, or can't find headline-yielding things to do.

"The House Committee on Un-American Activities ought never to have come into existence, and ought to be abolished; but, even if it persists in some form or other, the center of gravity has at least temporarily shifted -- for those of us with a concern that national security shall be preserved, without violating civil liberties."

Commenting on the first civil rights legislation passed by Congress in eighty years, the ACLU's annual report noted that "for the first time in recent decades the Senate faced the moral and political reality of the filibuster" and rejected it. The report reminded that on civil rights matters the Democrats usually are split and even when in accord, as last summer, are "united on a low level." In theory, it added, Republicans are more nearly united on civil rights but will do little about them, partly because the Democrats are split and because the GOP cannot secure enough additional Negro votes in northern urban areas to compensate for the loss of white votes in the South.

So, the Union report said, while the 1957 Civil Rights Act is "a considerable step forward...in actual realization of the Fifteenth Amendment," most progress in this field will continue to come through channels other than federal legislation -- "non-governmental efforts of many kinds, official state and local experiments, and federal executive and judicial action."

The use of federal troops in the Little Rock school integration conflict, the Union said, was necessary "to prevent mob action - uncontrollable, uncontrolled, or even stimulated by (state and local officials) from interfering with the long-planned observance by school authorities of a court order." But the Union recognized that the show of federal force "will for years to come work terrible harm in the South, chiefly by hardening lines against the 'moderates,' those who are opposed to integration but acknowledge its inevitability and want it to come by law and order."

Integration problems are not peculiar to the South, the report asserted, for "there are many metropolitan areas of the North where anti-Negro discrimination and inter-racial tension are increasing. Accelerated migration to such areas, of both Negroes and whites, from a number of southern areas is complicating - and complicated by - the already growing trouble between the suburbs and the central cities."

In a section on censorship, the Union re-emphasized its view that alleged obscenity should be attacked by prosecution of individual cases rather than by general regulations governing censorship. It said the "sweeping nature" of the Supreme Court decisions in obscenity cases during 1957 and the "variety and strength" of the dissenting opinions suggest that the "problem of censorship on grounds of obscenity has by no means been solved." It added that the majority decisions made clear, however, that persons who regard obscenity laws and rules as a major form of censorship must evolve different legal arguments. This is true because the high court ruled out a "clear and present danger" test for obscenity cases and gave little weight to arguments that obscenity laws are too vague.

ACLU found the revised Motion Picture Code even "harsher and more restrictive than the old one;" and condemned the National Organization for Decent Literature for its attempts to impose censorship on all Americans by threats, boycotts, and blacklists. At the same time, it noted that apart from denial of access to government news, there was little specific censorship or intimidation of the press during the last twelve months.

The 100-page annual report titled, "Justice For All - Nor Speak With Double Tongue," discusses hundreds of cases in which the Union and its affiliates across the nation intervened -- through test suits and friend of the court briefs, through educational programs, and through public statements of policy and protest.

In other areas during the last year, the ACLU:

Sought through protests and test suits to have loyalty oaths declared unconstitutional for tenants in public housing accommodations, for veterans and churches desiring property tax exemptions, and for prospective jurors.

Defended the constitutional rights of the National Association for the Advancement of Colored People when eleven states sought to suppress it by legal maneuvers.

Supported legislative bills, approved in four states but not passed in eight others, prohibiting racial bias in publicly-assisted housing.

Commended the United Auto Workers union for adopting a plan, long advocated by the ACLU, for an outside review board to handle the cases of union members who may charge that their democratic rights have been violated within the organization.

Criticized the AFL-CIO executive council for declaring that any union official who invoked the Fifth Amendment could properly be dismissed from office automatically, without an independent hearing. But praised the AFL-CIO subsequently for providing due process at its hearing for Teamsters Union President Dave Beck.

Accused the Senate Select Committee of "occasional lapses" of fair procedures during its questioning of Beck.

Supported opponents of free bus transportation for sectarian school pupils, on the ground that such a service would be a form of state aid to religion and violate the First Amendment.

Intervened in behalf of individuals who complained they were victims of police brutality, and fought proposed arrest and detention legislation which it felt afforded scant protection for citizens.

Noted some progress toward elimination or control of wire tapping at the state level, despite nearly unanimous opposition by federal investigative agencies and state and municipal police.

Found little evidence that the United States had actively promoted civil liberties in other parts of the world. It said that American policy on self-government or independence of colonial peoples still is "dictated by cold war strategy in support of the European colonial powers." The admission of 36,000 Hungarians and the Administration's willingness to join in preparing through the International Labor Organization a convention on forced labor point, however, "toward a change in American attitudes to a concept of world law."

In his introduction Malin clarified the limits of the ACLU's role in conflict among labor, business and the public. The Union should not intervene in such issues as "anti-trust" or "right to work" laws, he said, for these basically are questions of economic freedom and do not come within the Union's scope.

"There is always a price of some sort to be paid for any chosen means. And to avoid paying too high a price in economic freedom - for business monopoly with its patent control and its mergers, for labor monopoly with its closed or union-shop contracts - the American people...must exercise that eternal vigilance which is the price of every sort of liberty. But a civil liberties organization, specializing in free speech, due process and non-discrimination,...can be most useful to all freedoms by continuing to limit itself to its own traditional areas where there are challenges aplenty in the labor-management field."

While a free society should pass few laws to regulate the affairs of private organizations, the ACLU said, wherever there is a heavy concentration of power in such groups "there is pressure on free speech, due process and non-discrimination." ACLU will not ignore this, Malin said, even though its efforts with respect to private organizations must be principally educational, not litigative.

ACLU membership increased for the tenth consecutive year, reaching approximately 40,000 in 1957, compared with 10,000 in 1949. The bulk of its \$368,000 income was contributed by members.

# # #

61-190-677

**JUSTICE FOR ALL**

“Nor  
Speak  
With  
Double  
Tongue”

*37th Annual Report of the  
American Civil Liberties Union  
July 1, 1956 to June 30, 1957*

---

AMERICAN CIVIL LIBERTIES UNION  
170 Fifth Avenue New York 10, N. Y.  
Telephone: ORegon 5-5990 Price 75¢

We regret that the names of Morris L. Ernst and Dorothy Kenyon were inadvertently omitted from the following list of Board members.

*Chairman—President*

*Honorary Chairman*—John Haynes Holmes

*Vice Chairmen*—Ralph S. Brown, Elmer Rice, Norman Thomas

*General Counsel*—Edward J. Ennis, Osmond K. Fraenkel, Barent Ten Eyck

Mrs. Katrina McCormick Barnes	Lewis Galantiere	John Paul Jones
Daniel Bell	Walter Gellhorn	Dan Lacy
Mrs. Dorothy Dunbar Bromley	Julian E. Goldberg	Walter Millis
Lisle C. Carter	Louis M. Hacker	Gerard Piel
Richard S. Childs	August Heckscher	George Soll
William A. Delano	Frank S. Horne	J. Waties Waring
John F. Finerty	B. W. Huebsch	Howard Whiteside
Walter Frank	Mrs. Sophia Yarnall Jacobs	Edward Bennett Williams
	John Jessup	

**National Committee**

*Chairman*—E. B. MacNaughton

*Vice Chairman Emeritus*—Bishop Edward L. Parsons

*Vice Chairmen*—Pearl S. Buck, Albert Sprague Coolidge, J. Frank Dobie, Lloyd K. Garrison, Frank P. Graham, Palmer Hoyt, Karl Menninger, Loren Miller, Morris Rubin, Lillian E. Smith

Sadie Alexander	Melvyn Douglas	Prof. Robert Mathews
Thurman Arnold	Rev. Frederick May Eliot	Dr. Millicent C. McIntosh
Bishop James Chamberlain Baker	Prof. Thomas H. Eliot	Dr. Alexander Meiklejohn
Roger N. Baldwin	Walter T. Fisher	Harry C. Meserve
Alan Barth	James Lawrence Fly	Donald R. Murphy
Francis Biddle	Rev. Harry Emerson Fosdick	Dr. J. Robert Oppenheimer
Dr. Sarah Gibson Blanding	Prof. Ralph F. Fuchs	Bishop G. Bromley Oxnam
Catherine Drinker Bowen	Prof. Willard Goslin	James G. Patton
Prof. Julian P. Boyd	Grover C. Hall, Jr.	A. Philip Randolph
Van Wyck Brooks	Prof. Mark DeW. Howe	Elmo Roper
John Mason Brown	Quincy Howe	John Nevin Sayre
Howard F. Burns	Dr. Robert M. Hutchins	Prof. Arthur Schlesinger, Jr.
Prof. James R. Caldwell	Gerald W. Johnson	Joseph Schlossberg
Dr. Henry Seidel Canby	Dr. Mordecai W. Johnson	Dr. Edward J. Sparling
Prof. Robert K. Carr	Dr. Percy L. Julian	Prof. George R. Stewart
Stuart Chase	James Kerney, Jr.	Mrs. Dorothy Tilly
Grenville Clark	Benjamin H. Kizer	Prof. Edward C. Tolman
Dr. Rufus E. Clement	Dr. John A. Lapp	William W. Waymack
Prof. Henry Steele Commager	Prof. Harold D. Lasswell	Stanley Weigel
Morris L. Cooke	Agnes Brown Leach	William L. White
Dr. George S. Counts	Max Lerner	Aubrey Williams
Prof. Robert E. Cushman	Prof. Robert S. Lynd	Dean Benjamin Youngdahl
Elmer Davis	John P. Marquand	

**National Executive Staff**

*Executive Director*—Patrick Murphy Malin

*Assistant Directors*—Alan Reitman, Jeffrey E. Fuller, Louis Joughin

*Staff Counsel*—Rowland Watts

*International Work Adviser*—Roger N. Baldwin

*Washington Office Director*—Irving Ferman

(Room 601-2, Century Building, 412 Fifth Street, N.W., Washington, D.C.

Telephone: REPUBLIC 7-8123)

## JUSTICE FOR ALL

5. Radio and TV . . . . .	53	
6. Access to Government News and Public Records .	55	
Academic Freedom . . . . .	56	
1. Issues before the Federal Courts and Agencies. .	56	
2. State and Local Issues . . . . .	57	
3. Issues Within Educational Institutions . . . . .	60	
4. Education and Research . . . . .	61	
Religion. . . . .	62	
1. Church and State: Education . . . . .	62	
2. Church, State and the General Public . . . . .	65	
3. Problems of Religious Freedom . . . . .	67	
General Freedom of Speech and Association . . . . .	70	
IV. JUSTICE UNDER LAW—DUE PROCESS . . . . .		73
Investigations and Arrests . . . . .	73	
Due Process: the Courts . . . . .	80	
Due Process: Federal Executive Departments . . . . .	89	
1. Citizenship, Passports and Visas, Deportations .	89	
2. Problems of Military Personnel . . . . .	92	
Due Process: Legislative Investigating Committees .	93	
V. INTERNATIONAL CIVIL LIBERTIES . . . . .		95
At the United Nations . . . . .	96	
The Bricker Amendment . . . . .	97	
Admission of Aliens. . . . .	98	
UN Employees . . . . .	98	
United States Territories . . . . .	99	
The Ryukyu Islands . . . . .	100	
STRUCTURE AND PERSONNEL . . . . .		101
MEMBERSHIP AND FINANCES . . . . .		106
PUBLICATIONS LIST . . . . .		112

“Nor  
Speak  
With  
Double  
Tongue”

*37th Annual Report of the  
American Civil Liberties Union  
July 1, 1956 to June 30, 1957*

---

AMERICAN CIVIL LIBERTIES UNION  
170 Fifth Avenue New York 10, N. Y.  
Telephone: ORegon 5-5990 Price 75¢

61-196-687

## TABLE OF CONTENTS

RE-DEDICATION . . . . .	4
"NOR SPEAK WITH DOUBLE TONGUE"	
BY PATRICK MURPHY MALIN . . . . .	5
I. NATIONAL SECURITY . . . . .	
The Jencks, Watkins, Sweezy, and 1957 Smith Act Decisions . . . . .	9
The Report of the Loyd Wright Commission . . . . .	12
Federal Regulations and Cases . . . . .	13
State Laws, Regulations and Cases . . . . .	15
Private Employment . . . . .	20
Right to a License . . . . .	21
II. EQUALITY BEFORE THE LAW . . . . .	
The Civil Rights Bills . . . . .	24
The Civil Rights Scene . . . . .	25
Labor . . . . .	34
1. External Union Problems . . . . .	34
2. Intra-Union Problems . . . . .	35
American Indians . . . . .	36
III. FREEDOM OF BELIEF, EXPRESSION AND ASSOCIATION . . . . .	
The Roth, Alberts, Kingsley and Butler Decisions . . . . .	37
ACLU Statement on Censorship by Private Organizations and the National Organization for Decent Literature . . . . .	40
The General Censorship Scene . . . . .	41
1. Newspapers . . . . .	41
2. Books and Magazines . . . . .	42
3. Plays and Motion Pictures . . . . .	48
4. Music and Art . . . . .	52

## RE-DEDICATION

"United States! the ages plead—  
    Present and Past in under-song,—  
Go put your creed into your deed,  
    Nor speak with double tongue . . .  
Be just at home; then write your scroll  
    Of honor o'er the sea,  
And bid the broad Atlantic roll,  
    A ferry of the free."

(From the *Ode*, by Ralph Waldo Emerson, sung at Concord, July 4, 1857—four months after the 5-4 Dred Scott decision by the Supreme Court.)

---

"Our cause is the cause of justice for all in the interest of all."

(Theodore Roosevelt, born October 27, 1858)

---

"The New World was not as 'new' as its admirers could have wished. Human nature, which included Original Sin, had crossed the Atlantic with the first immigrants and with all their successors . . . and, as the twentieth century advanced and darkened, it became more and more apparent that . . . a philosophy of life which was not applicable to the whole of [the Human Race] might not be applicable to any part of it in the long run."

(From Arnold Toynbee, *A Study of History*, Somervell abridgment, vol. 2, p. 339; 1957—three years after the 9-0 school decision by the Supreme Court.)

## **“NOR SPEAK WITH DOUBLE TONGUE”**

**BY PATRICK MURPHY MALIN**

Nineteen fifty-seven has been a year of portent, even for lesser minds than Toynbee's, as eighteen fifty-seven was a year of portent, even for lesser minds than Emerson's. “Justice for all in the interest of all,” the American democratic cause as phrased by Theodore Roosevelt—whose centennial observance began on his 99th birthday last month—is still precariously poised between success and failure, as always and everywhere. The success of that cause throughout the world in our era, dominated by “modern western industrial civilization,” depends mostly on whether the United States—the chief exemplar of that civilization—speaks of its civil liberties with no “double tongue” in the twenty-five years between 1957 and 1982, the centenary of Emerson's death.

At the beginning of those twenty-five years, American civil liberties are bound to be affected, directly or indirectly, by all of this year's portentous events: Last spring's exhilarating decisions of the Supreme Court, and the bulky report of the (Loyd Wright) Commission on Government Security; the revelations of the McClellan labor-management investigation, and the AFL-CIO's grappling with the teamsters' union; the first Civil Rights Act since 1875, and Little Rock. Inflation, and recession. The immemorial Middle Eastern crisis, the almost equally old Kremlin power-struggle, and the brand-new sputniks!

The security of the United States, and the peace and freedom of mankind, are in much greater danger internationally than they were a year ago; and recognition of the danger is much wider and deeper in American minds than it was a year ago. This may mean that civil liberties will soon again be under intensified pressure, in the name of national security; but, at the present moment, we can take heart from the fact that public opinion as a whole seems to have matured considerably in its understanding of which measures do—and which do not—really serve national security.

Whether or not the sputniks were produced in part on the basis of information and ideas stolen from this country by spies, it seems to be generally recognized that they signify much else about Soviet science and technology—and about our own. Americans who are both patriots and free men can be encouraged by an October 29 column of Arthur Krock (a “balanced” man, if there ever was one!): “The Administration clearly has resolved its doubts about amending the McMahon act for the purpose of freer scientific exchanges with our allies. It is visibly relaxing some of its ideas of ‘security’ standards as applied to scientists.

And the frequency of progress bulletins from military installations for the production of rocketry suggests not only a drive for more progress that has its source in the highest civilian authority. It also indicates a change in the policy of secrecy that has kept the Western peoples uninformed of American military developments which the Soviet rulers either know or shrewdly suspect."

We can be cheered by another thing, too. The members and sympathizers of the Communist Party in this country are now a tiny and puny crew. For the police job necessary to internal security, this is a big help; you don't have to watch so many Americans whose minds are in the Kremlin's pocket, but can concentrate on the relatively few and relatively conspicuous agents sent in from abroad. And you can do that at much less cost to civil liberties than has been exacted by our panicky indiscriminate efforts to do the impossible—plug every conceivable loophole.

It is not the professionals—for example, the FBI and the courts—who have been most guilty of those excesses, but the galloping amateurs—in the legislatures, the executive agencies and the public at large. Happily for civil liberties, some of those amateurs are growing in wisdom; and the rest are now under stern warning from the Supreme Court, or can't find headline-yielding things to do. The House Committee on Un-American Activities ought never to have come into existence, and ought to be abolished; but, even if it persists in some form or other, the center of gravity has at least temporarily shifted—for those of us with a concern that national security shall be preserved, without violating civil liberties.

What we most need to work on in this connection—next year, and during a very long future, if Armageddon can be prevented or postponed—is the vital twofold problem of keeping the wrong people out of government service *in such a way as to get the right people into it!* The report of the Commission on Government Security, published in June, includes some commendable proposals; but the general impression which it makes on this semi-expert reader is that of a multiplication of negative rules and mechanisms—in basic neglect of the old Notre Dame football axiom that the best defense is a good offense! Our national defense—as should be glaringly visible to the blindest, this portentous year of the sputnik—demands that a host of the most competent citizens the country possesses should be enlisted for the duration, in all parts and at all levels of our government; and they can't be got and kept if they feel they are being scrutinized as potential traitors. Men who are used to being free men will give their best to keep their nation free only if the nation keeps them free while they work to keep it free.

As if the defenders of civil liberties didn't have enough to do, with

big governments and big missiles, they are confronted also by big business and big labor.

There are lots of things which people want besides freedom, and big business and big labor are among the means which provide them. There is always a price of some sort to be paid for any chosen means; and, to avoid paying too high a price in economic freedom—for business monopoly with its patent control and its mergers, for labor monopoly with its closed- or union-shop contracts—the American people, as individual citizens and in organized ways, must exercise that eternal vigilance which is the price of every sort of liberty. But a civil liberties organization—specializing in free speech, due process and non-discrimination on grounds of sex, race, creed or national origin—should not, as an organization, occupy itself with the economic questions involved in “anti-trust” laws on one side or “right-to-work” laws on the other. The American Civil Liberties Union can be most useful to all freedoms by continuing to limit itself to its own traditional area, where there are challenges aplenty in the labor-management field.

Now, even in a free society, you can't expect to have a corporation or a union internally characterized by precisely the same freedoms as are indispensable in society-at-large, between citizens and governments; and, to remain a free society, you would better pass few laws on the internal affairs of private organizations—even to protect stockholders from irresponsible corporate management, or rank-and-file unionists from corrupt and tyrannical officers. But wherever there is heavy concentration of power, even if private, there is pressure on free speech, due process and non-discrimination; and the American Civil Liberties Union cannot ignore it, even though our efforts with respect to private organizations must be principally educational, not litigative.

Regarding the Civil Rights Act of 1957, and Little Rock, the members of the ACLU—like their fellow-citizens—have been buried under tons of newsprint already; so, we need here simply to emphasize a few prime considerations: The extreme difficulty encountered in obtaining the passage of an Act any better than nothing at all, even on the central democratic right of the vote, indicates how little can realistically be hoped for through federal legislation in the predictable future. Similar caution should apply to expectation of results from the 1957 Act itself—whether through the Reed Commission announced last weekend, or through the utilization by the additional Assistant Attorney-General (not yet announced) of the Act's new methods of promoting civil rights (no new *rights* are provided). The fundamental political facts are these: the Democratic Party, when united as it was last summer, is united on a low level so far as civil rights are concerned, and usually is openly split as it is again since Little Rock; the Republican Party remains much more nearly united on the theory of civil rights,

but is not going really to do much more about them—partly because the Democrats are split, and partly because (as the New Jersey gubernatorial election suggests) the Negroes of the northern cities cannot be thus induced to compensate for the loss of southern white votes. Therefore, civil rights progress will have to continue to come almost entirely through channels other than federal legislation—non-governmental efforts of many kinds, official State and local experiments, and federal executive and judicial action.

And Little Rock highlights the fact that even such judicial and executive action operates within strict practical limits. Though outsiders may not be competent to say whether the President had to use the particular form of federal force which he did employ—the paratroopers—some force was needed, not to enforce school integration on recalcitrant State or local officials; but to prevent mob action—uncontrollable, uncontrolled, or even stimulated by such officials—from interfering with the long-planned observance by school authorities of a court order. But, no matter how completely federal force was justified—in the situation created by Faubus' wrongful action on September 2, and the White House's lack of creative leadership between 1954 and 1957—it will for years to come work terrible harm in the South (as the Virginia gubernatorial election shows)—chiefly by hardening lines against the "moderates," those who are opposed to integration but acknowledge its inevitability and want it to come by law and order. Moreover, there are many metropolitan areas in the North where anti-Negro discrimination and inter-racial tension are increasing; accelerated migration to such areas, of both Negroes and whites, from a number of southern areas is complicating—and complicated by—the already growing trouble between the suburbs and the central cities.

The ACLU is in 1957 relatively strong in comparison with what it itself once was—in membership (40,000 instead of 10,000 as recently as 1949), in organized affiliates across the country, in experience and in popular esteem. But it is still weak in comparison with all the work there is to do. We forty thousand members ought immediately, not gradually, to become four hundred thousand. Each of us should begin right away to recruit at least one new member every month during 1958. "Go put your creed into your deed, nor speak with double tongue."

---

This report, which can cover only the most important events in our field and only the most important actions we have taken, nationally and locally, has been edited and in large part written by Louis Joughin—with substantial help from Alan Reitman, Jeffrey Fuller, Rowland Watts, Irving Ferman and Roger Baldwin, as well as our affiliates' staffs and officers. Among the many others to whom we are indebted for actual work done, the cooperating attorneys have earned special thanks.

## I. NATIONAL SECURITY

The United States Supreme Court in 1957 arrived at a series of judgments of prime importance in the area of the relationship between national security and the individual liberties of Americans. The legislative and executive branches of the government, through the jointly appointed Loyd Wright Commission, gave thorough study to the many problems of loyalty and security which affect federal employment and employment in industry and other activities which relate to government security. Whatever one may think of particular aspects of the Court's decisions or the Commission's report, the studied seriousness of these statements is in sharp contrast to the hysteria and near-terror of only a few years ago.

### *THE JENCKS, WATKINS, SWEZZY, AND 1957 SMITH ACT DECISIONS*

*Jencks Case.* Clinton Jencks, a labor organizer, was charged with and convicted of filing a false non-Communist affidavit under the Taft-Hartley Act; his appeal to the U.S. Supreme Court raised the constitutional issue of his ability to make an adequate defense because some of the witnesses against him based their observations on documents which he was not permitted to examine—in short, the FBI files. In a 7-1 decision the Court ruled that the government had a relatively simple choice to make; it could agree to produce for the purpose of confrontation and cross-examination all earlier reports in the files by a government witness on matters concerning which he testifies even though it might mean exposing the names and techniques of counter-espionage agents, or it could keep such information secret but not use it as evidence. Jencks' conviction was reversed.

Many voices were raised in praise of the Supreme Court for its emphatic re-definition of the rights inherent in a full defense. The FBI and the Department of Justice, observing that the techniques of investigation and file-building in use for many years would have to be radically altered, expressed deep concern about the future of many of its important prosecutions. In August Congress enacted legislation more exactly defining the rules for disclosure: 1—judges (rather than prosecutors) are required to examine secret government files to determine which evidence is "relevant"; 2—only those reports may be required to be produced which contain prior statements of the witness relevant to his testimony, and which are essentially "verbatim" in nature.

*Watkins Case.* This case, in which the ACLU filed a friend-of-the court brief, specifically addressed itself to the kind of questions asked by a legislative investigating committee. Watkins, now an organizer for the United Automobile Workers Union, AFL-CIO, refused before the House Un-American Activities Committee in 1954 to name former associates active in the Communist Party, although he testified freely as to his prior association with Party members; he denied he was ever a Party member. The Court, in an opinion which should have a wide effect, stated that it remained "unenlightened as to the subject to which the question asked petitioner was pertinent. . . . Fundamental fairness demands that no witness be compelled to make such a determination with so little guidance. Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigating body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounding questions were pertinent thereto." Although the decision did not turn on the question of "informing on others," it has implications for this problem. More broadly and even more significantly the U.S. Supreme Court noted—as it has many times in the past—that while the legislative investigating process is extremely broad it is not "unlimited." The Court said: "There is no general authority to expose the private affairs of individuals without justification in terms of the function of the Congress. . . ." The Union has, for many years, objected to such "exposure."

*Sweezy Case.* Chief Justice Warren and Justices Black, Douglas and Brennan wrote the preponderant opinion among the majority in this case involving questioning of a guest instructor about the contents of a lecture delivered at the University of New Hampshire, such questioning having been undertaken by the state Attorney General functioning as a one-man investigating committee for the New Hampshire legislature. Sweezy was also asked about his and his wife's participation in the Progressive Party and their associates therein. The Chief Justice's opinion recognized the right of a state to investigate subversion and indeed to delegate such investigation to a single state official but held that "there was nothing to connect the questioning of petitioner with . . . [the] fundamental interest of the state." In short, Sweezy having denied that he had ever been a member of the Communist Party or that he had ever been part of any program to overthrow the government by force or violence, a further fishing expedition violated his constitutional rights.

Justices Frankfurter and Harlan, concurring in the result, argued a different line. In their opinion Sweezy's rights as an individual, under the First Amendment, were violated by inquiry into his beliefs and

associations; these violations were particularly significant because they involved both academic freedom (the very freedom of the institution as well as the teacher), and Sweezy's right to normal political activity. In a dissenting opinion Justices Clark and Burton held that the unquestioned right of the state to investigate subversion raised only the issue of interpretation of a state law and that in this instance the Supreme Court of New Hampshire had final say.

*The 1957 Decisions on Smith Act Cases.* The Court's decision, with regard to 14 persons convicted under the conspiracy clause of the Smith Act, held that advocacy of violent overthrow of the government, unrelated to any advocacy of action to accomplish this objective, was not illegal. This is the basic position advanced by the ACLU over the years in its opposition to the Smith Act; in these cases a friend-of-the-court brief had been filed jointly by the Southern California affiliate and the national organization. In a 6-1 decision, the Court directed the acquittal of 5 of the defendants because "the sole evidence as to them was that they had long been members, officers, or functionaries of the Communist Party of California; and that standing alone . . . makes no case against them. . . . Since the Communist Party came into being in 1945, and the indictment was not returned until 1951, the three-year statute of limitations had run on the 'organizing' charge. . . ." New trials were ordered for the other 9 defendants on the ground that the lower courts had misapplied the 1951 Dennis decision. The high court said: "The essence of the *Dennis* holding was that indoctrination of a group in preparation for future violent action, as well as exhortation to immediate action, by advocacy found to be directed to 'action for the accomplishment' of forcible overthrow, to violence 'as a rule or principle of action' and employing 'language of incitement' is not constitutionally protected when the group is of sufficient size and cohesiveness, is sufficiently oriented toward action, and other circumstances are such as reasonably to justify apprehension that action will occur." But here "the essential difference is that those to whom the advocacy is addressed must be urged to *do* something, now or in the future, rather than merely to *believe* in something." In commenting on the evidence the Court said: "The function of an overt act in a conspiracy prosecution is simply to manifest 'that the conspiracy is at work,' . . . and is neither a project still resting solely in the minds of the conspirators nor a fully complete operation no longer in existence. . . ."

The fact that the Court directed the acquittal of 5 persons because the sole evidence was membership, may be an indication of the position the Court will take in the cases of individuals convicted under that clause of the Smith Act which makes criminal the fact of Communist Party membership.

## THE REPORT OF THE LOYD WRIGHT COMMISSION

Long years of debate within all the branches of government about the proper relationship of a federal security program to due process and the freedom of the individual in government employment, came to a focus with the 1957 report of the non-partisan Loyd Wright Commission.

Immediately after the June 23 release of the Commission's Report the ACLU appointed a special committee to evaluate the 800-page document; August Heckscher, ACLU national Board member, will serve as chairman of that committee. In the meantime the Union issued a preliminary and tentative reaction:

1. Three important proposed changes in the federal employee security program should be welcomed:
  - a. the granting of hearings to all applicants whose loyalty is questioned—such hearings would correct a major defect of the present program which does not permit challenging of derogatory information collected in the central index file of the Civil Service Commission;
  - b. improvement in the key area of confrontation and cross-examination by revealing to an employee the sources of information in the government files except for official counter-intelligence agents—such confrontation would go far to eliminate idle neighborhood gossip which, under the present system, an employee has never been able effectively to rebut;
  - c. giving to the hearing examiner of the proposed new central security office, and to the applicant or employee, the right to subpoena witnesses to testify at loyalty hearings—the possibility of being called by subpoena should induce in persons making statements a greater sense of responsibility.
2. Also to be regarded with favor are the Commission's recommendation that the "confidential" category in the classification of documents be eliminated, and the Commission's recommendation that the extension of the Industrial Security system to cover all persons having access to defense plans be rejected.
3. With respect to the proposed creation of a central security office, the ACLU said that this recommendation "is much too involved for any final judgment at this time. Its stress on uniform regulations and better trained security officers could ease pressure on civil liberties. However, we want to review more fully the question whether such an office would become a bureaucratic apparatus of too much centralized power."

4. On first examination the ACLU also discovered in the Commission Report elements calling for unfavorable criticism:
  - a. a proposal that the Department of State retain power to deny passports as a security measure, thereby preventing people from traveling to places without Departmental authorization;
  - b. the failure of the Commission to urge an end to wiretapping by the Department of Justice.

The Union will also give consideration to the particular recommendations of the Commission relating to use of the Attorney General's list and to the proposed penalties for those who publish secret government information.

## ***FEDERAL REGULATIONS AND CASES***

Further developments and appellate judgments in a number of cases have during the past year thrown more light on the security problem, although the great majority of cases represent the application of existing principles (see below, pp. 89-92).

***Communist Party Registration.*** As directed last year by the Supreme Court, the Subversive Activities Control Board reconsidered its requirement that the Communist Party register as a subversive organization, without consideration of certain perjured testimony. The Board came to the same conclusion and the case is again on its way up to the Supreme Court for testing of the fundamental constitutionality of the registration requirements of the 1950 Internal Security Act.

***"McCarthy Committee" Contempt Citations.*** When the U.S. Court of Appeals in Washington reversed the contempt of Congress conviction of Harvey O'Connor, the last of 7 persons indicted for contempt of the Senate because of refusal to answer a committee headed by the late Senator McCarthy, has been freed. Previously 2 persons had been acquitted and the charges dismissed against 5 others; all of these in one way or another refused to answer questions put by the committee. O'Connor had been asked to say whether he belonged to "the Communist conspiracy." The U.S. Court of Appeals in Washington considered this term, "Communist conspiracy," too vague. "The Sixth Amendment . . . provides that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation. . . . This required in the present case that the questions set forth in the indictment be definite enough to enable the accused to answer it with knowledge of its meaning. . . . One cannot be held guilty of criminal contempt for refusing to answer a question the intended scope of which is so uncertain that if he attempts to answer it truthfully, according

to his understanding of the meaning, he runs the risk of being indicted for perjury because others understand it differently."

The ACLU filed a friend-of-the-court brief in this and several other cases, all on the basis of First Amendment rights, but the courts did not reach the constitutional First Amendment issue; five of the defendants were freed on court rulings that the subcommittee could not question them about their political associations since the mandate of the investigating committee covered efficiency and economy in government operations.

**Other Contempt Citations.** Playwright Arthur Miller admitted to past attendance at a number of Communist Party meetings although not a member; he refused to name other persons present. Professor Otto Nathan refused to indicate whether he had told the truth in stating on a passport application that he had never been a member of the Communist Party. Attorney Harry Sacher and college instructor Lloyd Barenblatt refused to answer questions about Communist Party membership and associations. All of these refusals were in inquiries conducted by Congressional investigating committees; none of the persons involved pleaded the Fifth Amendment; they variously refused to answer on grounds of conscience, the First Amendment, or the Tenth Amendment (which it was claimed precluded federal investigation into education as a matter reserved for the states). The U.S. Supreme Court has remanded the Sacher and Barenblatt cases to the Circuit Court for further action in line with the Watkins case decision.

**NLRB - Communist Oath Cases.** The U.S. Supreme Court ruled in two labor union cases that although the members of the unions knew that their officers had filed false affidavits under the Taft-Hartley Law, denying Communist Party membership, the labor groups did not thereby deprive themselves of their general benefits under the Act. The Court ruled that the only punishments possible for the false affidavits were for perjury. These cases concerned the International Union of Mine, Mill and Smelter Workers and the Amalgamated Meat Cutters.

**Ben Gold Case.** The four-year-old indictment of Ben Gold, former president of the Fur and Leather Workers Union, charged with filing a false non-Communist oath under the Taft-Hartley Act, has been dismissed at the motion of government attorneys. Early in 1957 a conviction was reversed by the Supreme Court because agents of the FBI had improperly intruded by talking to some members of the trial jury. In moving to dismiss, the Justice Department said that certain material evidence needed for a successful prosecution was not available for a new trial.

**The Powell-Schuman Case.** During the Korean war period the *China Monthly Review* of Shanghai published statements attacking the

U.S. forces in Korea, the motives of this government, the tactics of the peace talks, and charges that the United States had practiced germ warfare. The publishers, John W. and Sylvia Powell, and Julius Schuman have now been indicted under the 1917 Sedition Act charged with conspiring to publish material harmful to American armed forces in Korea. Quite apart from the rightness or wrongness of what was published, two civil liberties issues arise: 1—freedom of the press to print even mis-information and to offer even intemperate editorial opinion, and 2—the due process issue of an adequate defense in the face of the unavailability of defense evidence. (See also below, p. 91.)

*Industrial Security Program Clearances.* In December 1956 the Defense Department issued its first annual report on the operations of the security clearance program in industry. More than two million persons employed by defense contractors must be cleared for work on classified information. In the period from July, 1955 to July, 1956 the military services referred 418 cases with the recommendation that these persons not be cleared. A Defense Department central screening board cleared 270 and turned down 134, a 60% clearance rate contrasting with a previous 37% rate. On appeal to a higher review board the majority of the denials were endorsed. In issuing this report the Defense Department criticized some contractors for discharging persons denied clearance instead of transferring them to non-sensitive jobs. The report indicated the government's belief in the necessity of informers for certain types of evidence but indicated its desire to have those informers subject to cross-examination unless they were under-cover agents or exceptional sources of information.

The ACLU is continuing its study of Defense Department regulations which permit the government to obtain information about workers not in sensitive positions handling classified material.

## ***STATE LAWS, REGULATIONS AND CASES***

*Illinois Broyles Law.* Late in 1956 the Illinois Supreme Court upheld the constitutionality of that state's Broyles Law, requiring employees whose salaries are paid in whole or in part from state funds to swear that they are not Communists and do not belong to any organization which seeks to overthrow the government by force or violence. The Illinois Division supported test cases by 3 Chicago teachers who argued that the law made no provision for a hearing and that it was arbitrary in exempting employees of other public political divisions. The court rejected these arguments stating that the law does not describe a crime or offense but "merely prescribes a standard of eligibility" and merely "sets one of the terms with which one must comply who desires to obtain or continue public employment."

*Arkansas and Washington.* Governor Orval E. Faubus of Arkansas has vetoed a loyalty-oath bill on the ground that a 1947 law already makes it illegal for any state employee to belong to a group advocating overthrow of the constitutional form of government and a 1951 law requires the registration of any organization or individuals advocating violent overthrow, and because innocent persons might be punished for failure to comply with the provisions of such a law—particularly since penalties were established for those who paid money to persons who had not signed a loyalty oath.

In the state of Washington, Professors Max Savelle and Howard Nostrand obtained a permanent injunction restraining the regents and the administration of the University of Washington from requiring the execution of a loyalty oath under a 1955 law. The court held that the use of the U.S. Attorney General's List was an invalid delegation of legislative authority since it was unaccompanied by standards, and also found a technical defect in the title of the act; it did not deal with the contention that the act violated the First, Fifth and Fourteenth Amendments of the U.S. Constitution. Washington ACLU, which supplied counsel and met costs in this case, will now seek a ruling from the state Attorney General making the court's decision effective for all state employees.

*New York State Security Risk Law.* This law, which has been extended each year since 1951, provides that no persons may be employed in "security" positions in the state or in any municipal government if "reasonable grounds" exist for the belief that, because of "doubtful trust and reliability," that employment would "endanger the defense of the nation or the state." The New York Civil Liberties Union has issued a pamphlet exposing the weaknesses and lack of need for such legislation; NYCLU has also filed a brief in support of Max Lerner, a New York City subway conductor who pleaded the Fifth Amendment when certain questions were put to him by a city deputy commissioner of investigation. Lerner was told that the questions put to him were authorized under the security risk law but was not informed whether charges had been filed against him. The New York State Court of Appeals ruled adversely in this case; it is now before the U.S. Supreme Court.

In the important Reif case, the New York Civil Service Department has ruled that the principle enunciated by the U.S. Supreme Court in the Cole case of last year prohibits discharge of a state employee unless there is a showing that continued employment could endanger the security of the state or nation. This ruling is in line with the long-held ACLU emphasis upon the distinction between "sensitive" and "non-sensitive" work. In this NYCLU-supported case, the person involved admitted to membership in the Communist Party from 1939-41 but

denied membership or activity in the Party in subsequent years. An appeal to the courts will be taken by the New York City Corporation Counsel.

*Public Housing Loyalty Oaths.* Although the Gwinn Amendment is no longer in force it appears that in some areas state or local housing authorities will continue the practice of asking a loyalty oath of tenants in public housing. Washington ACLU expects to institute a test case on a required oath from a tenant in Seattle. In New York Governor Harriman found himself in agreement with the NYCLU as to the unconstitutionality of a public housing law which would require tenants to sign affidavits that they were not members of organizations held to be subversive by the state board of regents, and vetoed the bill.

*Special Loyalty Oaths in California and New York.* In California the state Supreme Court in April 1957 by a 4-3 decision upheld the constitutionality of a loyalty oath requirement for veterans and churches seeking property tax exemptions. The majority opinion held that the advocacy of subversive activities presents an immediate danger, that only those "engaged in subversive activities are affected by the oath requirement," and that the oath is a reasonable regulation by the legislature in administering the tax-exemption laws of the state. In one of the two dissenting opinions Justice Jesse Carter pointed out that there was no evidence that "any of the churches or veterans here advocated or intended to advocate the forbidden political philosophy." He characterized the law concerned as "a sort of shot-gun attempt . . . to hit an undefined object. In other words, there is no relation between the object to be achieved and the tactics taken to achieve it." A New York statute bars from jury duty any person who is knowingly a member of the Communist Party or any other group advocating violent revolution. The New York Civil Liberties Union became particularly concerned when it discovered that the questions asked of jurors in two judicial departments were actually much broader, relating to the past as well as the present, any type of affiliation, and innocent as well as knowing affiliation. The presiding justice of one of the departments concerned has indicated that the questionnaire will be appropriately revised.

*Wisconsin and California Keep Open Forum.* The state Senate by a vote of 19-12 defeated a bill which would prohibit Communists or subversives from meeting or speaking in tax-supported public buildings in Wisconsin. This legislation was proposed because the board of regents of the University of Wisconsin ruled that the now defunct Labor Youth League could meet in university buildings and have out-of-state persons address them. Senator William Trinke, a former commander of the Wisconsin department of the American Legion, charged that "the

backers of this bill want to foist the ugly head of intolerance, ignorance, and thought control on a great university. . . . This bill is unworkable, un-American and unconstitutional." The Wisconsin CLU opposed this bill through its whole legislative history.

The California legislature failed to adopt a bill denying tax-exemption to non-profit groups that permit their premises to be used by organizations on the U.S. Attorney General's list or by persons belonging to such groups.

*Maryland Improper Disclosure.* The ACLU Maryland affiliate has charged that the state Attorney General's office has given to the House Un-American Activities Committee information about persons not under indictment. The Ober "anti-subversive" law passed some years ago prohibits the Attorney General and the grand jury of Maryland from reflecting on the loyalty of an individual except by indictment.

*Denial of Unemployment Insurance Benefits.* William Albertson, now unemployed, worked for seven weeks in 1956 as an employee of the Communist Party. New York state Attorney General Louis L. Lefkowitz has given an opinion barring employees of the Communist Party from unemployment insurance benefits on the ground that the courts and legislative bodies have determined that the Communist Party is a conspiracy and, in his opinion, its employees should not "enjoy the advantages and benefits of this public insurance program." Albertson contends that he should receive benefits because the state has accepted unemployment insurance taxes from the Party and that the Party has never been declared illegal. NYCLU has entered this case, in which a ruling by a referee, unsatisfactory to Albertson and the state, will be appealed to the courts. Last year's ACLU report noted that the federal government had ruled against payment of such benefits but later reversed itself.

In Pennsylvania legislation was introduced to deny unemployment compensation to a person losing his job because he invoked the Fifth Amendment privilege against testifying against himself. Greater Philadelphia ACLU contends that such deprivation would prevent or deter a person from making use of the constitutional privilege; the affiliate quoted the language of the U.S. Supreme Court in the *Slochower* case: "At the outset, we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment. . . ."

*California Cases.* The Oakland, California library board has discharged a librarian for refusing to answer questions as to her past political beliefs and associations. The board inquired about such matters prior to the September 10, 1948 date—the limit set forth in legislation authorizing such inquiry. A county superior court has upheld the board's

action; Northern California ACLU will appeal the case. In one Southern California case involving a social worker, a court has upheld discharge because a hearing was granted the employee after he had refused to answer certain questions put by the House Un-American Activities Committee, pleading the First and Fifth Amendments. In a second case involving a social worker the discharge was set aside because no hearing was held at which the employee might explain his reasons for claiming the privilege. The case involving the adverse decision will be appealed by the Southern California ACLU affiliate.

*New York City Public Employees.* In an administrative ruling of major importance the State Education Commissioner ruled that neither the Board of Education nor the Board of Higher Education in New York City could dismiss teachers solely for refusal to give investigating bodies the names of other teachers now, or formerly, members of the Communist Party. In his ruling the Commissioner noted that the education boards had full authority to question any or all teachers about their membership and that it was not necessary as a practical matter to get such information from colleagues acting as informers. He also noted that a demand upon teachers for such informing would be destructive of morale within the educational system. New York City officials appealed this ruling to the courts but a decision was handed down that the Commissioner had not been arbitrary or capricious and it was noted that neither the Feinberg Law nor the rules of the Board of Regents provided for "dismissal of a public school employee for refusing to disclose . . . about the subversive affiliation of a co-employee." (See below, p. 57.)

A police lieutenant with a distinguished record was charged with Communist affiliations and failing to admit membership in the IWO and attendance at the Jefferson School of Social Science, when he joined the department in 1946. At a departmental trial it was shown that the officer's father had taken out an insurance policy with the International Workers Order for the boy when the latter was 14, and that the Jefferson School was not organized until 1944 at which time the policeman was in overseas service. The charges were dismissed. Two auxiliary policemen were charged with having signed a 1943 nominating petition on behalf of an allegedly Communist city councilman. They were dismissed without opportunity to examine the petition or to defend themselves at a hearing. NYCLU intervening, a hearing was held and the men denied ever having knowingly signed the petition (which was never produced) and reinstatement was ordered.

Also in New York City three members of the engineering staff of the Department of Public Works resigned when accused of insubordination and refusal to cooperate. The insubordination consisted in refusing to make detailed answers about allegations that they were Communist Party members since World War II. One of the engineers had helped

set up the city's siren warning system and supervised construction of emergency communications control centers.

**Public Office in Massachusetts.** The Massachusetts legislature has enacted a law requiring candidates for public office to make known "any Communist affiliation." The Civil Liberties Union of Massachusetts vigorously opposed the measure.

**De Gregory Case.** When questioned by a New Hampshire legislative committee investigating subversive activities, Hugo De Gregory claimed the Fifth Amendment; later, under provisions of that state's law, he was granted immunity from prosecution by court order, and directed to answer questions. De Gregory refused on the ground that New Hampshire law granted immunity only from state prosecution. He was found guilty of contempt and remanded to jail; a motion for stay of execution of sentence and release on bond pending appeal was denied by the trial court but granted by the Supreme Court of New Hampshire.

**Braden Case.** The state of Kentucky dropped remaining indictments against Carl Braden and six other defendants. This action came after a judge ruled that it would be necessary to exclude evidence of alleged membership in the Communist Party, sedition, criminal syndicalism, and a conspiracy to dynamite; such evidence would have only speculative relationship to the actual bombing which took place. (For the earlier history of this important case, in which the ACLU concerned itself, with several significant issues, see the 1954-55 *Annual Report*, pp. 33-4, and the 1955-56 *Annual Report*, p. 25.)

## PRIVATE EMPLOYMENT

**Hollywood "Blacklisting" Case.** The United States Supreme Court has granted a petition by 23 Hollywood writers, actors, directors and producers to hear their case alleging "blacklisting" by the motion picture industry because these individuals refused to cooperate with a congressional committee investigating communism. The Southern California ACLU brief, filed as friend-of-the-court, asserts that the major movie studios and their executives offered the petitioners a choice of surrendering their federal privileges and immunities or doing without work: "An election between survival and liberty . . . reduces the Constitution to empty platitudes, for neither dead men nor robots need constitutions. The right to work is a human right, a personal right, a constitutional right, and the opportunity to earn a living cannot be unjustly withheld from a man without doing violence to the constitutional guarantees protecting his life, liberty and property. . . ." The brief says that the undoubted right of a private employer to hire and fire is not at issue because each defendant waived his rights to "exercise his own unfettered judgment" when he joined the conspiracy to deny employment.

*Stanley Roszkowski's Dilemma.* Roszkowski worked for the Grumman Aircraft Corporation in World War II. Recently he sought reemployment with that firm but was denied a position because he was a security risk; the risk consisted in having a brother living in Poland, a brother Rowzkowsky has not seen for 30 years. Grumman will not hire the man until he has had security clearance. The Defense Department indicated that it would not give security clearance because of the brother. Later an unidentified Navy official and the ACLU pointed out that there was no barrier whatsoever to the hiring of a person who might later be declared a security risk. (See above, p. 15.)

*Faulk Libel Suit.* John Henry Faulk, radio commentator and a vice-president of the New York local of the American Federation of Television and Radio Artists, has filed a \$500,000 libel suit against AWARE, Inc., and certain persons charging that they are attempting to blacklist him and that they have published libelous articles as part of a conspiracy to destroy his livelihood and to effect his removal from his union office. A preliminary legal skirmish has led to a New York state appellate court decision that Faulk has "a good cause of action in libel."

### ***RIGHT TO A LICENSE***

*The Schware, Konigsberg and Related Cases.* In a unanimous decision, the U.S. Supreme Court ruled that New Mexico had denied Rudolf Schware due process when it refused to let him take the state bar examination. Schware had been charged with Communist Party membership between 1934 and 1940, arrests—not resulting in prosecution or trial, and the use of aliases—in organizing work and seeking employment (see last year's *Annual Report*, p. 34). The Court concluded that "past membership . . . does not justify an inference that he presently has bad moral character"; the use of aliases to avoid racial discrimination and permit effective union organizing work "is certainly not enough evidence to support an inference that [he] has bad moral character more than 20 years later . . ."; and "an arrest shows nothing more than that someone probably suspected the person apprehended of the offense. . . ." The Court also took into account the heavy weight of evidence favorable to Schware's character and present activities, saying, "The undisputed evidence in the record shows Schware to be a man of high ideals with a deep sense of social justice. Not a single witness testified that he was not a man of good moral character." The American Civil Liberties Union vigorously supported the Schware case from its inception.

Rafael Konigsberg refused to answer the California bar as to his past or present membership in the Communist Party; there was also the testimony of an ex-Communist that Konigsberg had attended Party

meetings in 1941. The California courts had ruled that such refusal constituted failure to prove that the candidate was of good moral character and did not advocate overthrow of the government by unconstitutional means. The majority of the U.S. Supreme Court refused to equate "unorthodox political beliefs or membership in lawful political parties with bad moral character. . . . In 1941 the Communist Party was a recognized political party in the state of California. Citizens of that state were free to belong to that party if they wanted to do so. The state had not attempted to attach penalties of any kind for membership in the Communist Party." It was also noted that Konigsberg had repeatedly asserted his complete opposition to overthrow of the government by violent means and that "no witness testified to the contrary." The Court also took up a number of editorials written by Konigsberg criticizing racial discrimination, American "big business," and the U.S. Supreme Court decision in the 1949 Smith Act case. The Court asserted that "Citizens have a right under our constitutional system to criticize government officials and agencies. Courts are not and should not be immune to such criticism . . . it is also important to society and the bar itself that lawyers be unintimidated—free to think, speak and act as members of an independent bar." Three dissenting justices believed that Konigsberg's refusal to answer prevented California from evaluating his disclaimer of belief in violent overthrow of the government. The Court ordered the California Committee of Bar Examiners again to consider Konigsberg's application to practice law. This case was supported by the Southern California ACLU.

The Oregon ACLU vigorously supported the case of Frank Patterson, denied admission to the bar on the ground that he did not have good moral character because he must have lied in stating that he did not believe the Communist Party advocated the violent overthrow of the government by force and violence. The U.S. Supreme Court, in line with the Schware decision, remanded the case to the Oregon courts for further appropriate action.

Leo Sheiner was originally disbarred in Florida because he had invoked the Fifth Amendment, and had been accused of Communist activity and Party membership. On appeal, the Florida Supreme Court ruled that his refusal to answer questions was not sufficient ground for disbarment. Sheiner was then directly charged with Communist activity and disbarred in 1956; subsequently it was disclosed that a chief adverse witness had given questionable testimony and the Florida State Supreme Court sent the case back to the trial judge for further hearing, finally ruling that the state had not proved its case and that Sheiner could not be disbarred. An appeal is being taken to the state Supreme Court.

*Improper Questions to Bar Admission Candidates.* The New York Civil Liberties Union has discovered that all persons wishing to

be admitted to the bar in New York County must answer this question: "Are you a member of any party or organization the object or purpose of which is to effect, directly or indirectly, changes in the form of government provided for by the United States Constitution?" Protest has been made to the appropriate presiding justice but an answer has not yet been received.

*Insurance Brokers and Agents.* Patrick Murphy Malin, ACLU executive director, has within the past year twice asked the District of Columbia Board of Commissioners to remove a "loyalty oath" question from the application for license form filed by insurance brokers and agents. The question asks about past and present Communist or other subversive organization membership, membership in organizations on the Attorney-General's list; and whether the applicant has ever refused "on constitutional grounds to give testimony before any court, grand jury, or other duly authorized tribunal." Malin asserted that "Questions concerning a person's political behavior simply are not pertinent to the job of selling insurance," which is certainly a non-sensitive field; "By asking these questions, the Superintendent of Insurance sets himself up as a political investigator for private employers, a function which we believe is not the responsibility of a government official."

Quite apart from the loyalty issue the ACLU executive head expressed concern about the fact that "public officials are assuming more and more authority in establishing standards of private employment . . . and unless the qualifications required to secure a license are confined to the actual needs of the community, the way is open for all private employment not specifically protected by the Constitution, as religion and the press, to become a privilege subject to the political whim of the licensing authority."

## II. EQUALITY BEFORE THE LAW

### *THE CIVIL RIGHTS BILLS*

The first session of the 85th Congress enacted the first civil rights legislation passed in eighty years. "The Civil Rights Act of 1957" embodied the Administration recommendation that a federal non-partisan Civil Rights Commission be appointed by the President, with subpoena powers, and that a new civil rights division be set up in the Department of Justice with its own Assistant Attorney General in charge. With respect to voting rights, the Act provides that the federal government, in its own name, may seek to control "any person . . . [who] has engaged or there are reasonable grounds to believe . . . is about to engage in any act or practice which would deprive any other person of any [voting] right or privilege." Control would be effected by the Attorney General's instituting in federal court "a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order." Persons who refuse to obey court orders could be fined or imprisoned by a judge, sitting without a jury, for civil contempt; such a civil contempt proceeding would be intended to enforce compliance with a court decree. If in addition a court sought to punish a person for refusing to obey its order, the proceeding would be one in criminal contempt. Here, the trial may be with or without jury at the discretion of the judge. However, if trial is without jury, and, on conviction, the judge imposes a punishment of more than 45 days in jail or \$300 fine the defendant is entitled to a new trial before a jury.

Congress did not enact, as the Administration had requested, provisions which would broadly permit U.S. intervention and injunctive action in non-voting civil rights areas, such as the right to education in integrated schools.

The American Civil Liberties Union in 1956-57 continued its support of the Administration's bill in extension of civil rights (see last year's *Annual Report*, pp. 71-2). The House of Representatives passed what was essentially the Administration's proposal; the Senate, however, attempted to introduce a requirement for jury trial in virtually all situations. At this point, on August 7, 1957, the ACLU announced that it would prefer the defeat of civil rights legislation to passage of anything like the Senate civil rights bill. The final form of the act, in the opinion of the ACLU, cannot be understood in its full significance until it is tested in application. However, there is every reason to believe

that a considerable step forward has been made in actual realization of the 15th Amendment.

Of related significance was the parliamentary situation when the Senate came to consider the compromise bill that emerged from committee. For the first time in recent decades the Senate faced the moral and political reality of the filibuster; Senators of both parties and of all views on the civil rights question rejected the use of filibuster.

### *THE CIVIL RIGHTS SCÈNE*

*The Attitude of the People.* Strong evidence indicates that most Americans are making rapid and notable progress toward attitudes which will harmonize with the established political and legal forms of equality. Between 1942 and 1956, the National Opinion Research Center indicated major increases in the per cent of white people who will live in a mixed community, travel on public vehicles without separation of the races, and accept integrated education. Southerners are changing their opinions as rapidly as persons in other parts of the country. Perhaps the most important question asked was: ". . . do you think Negroes are as intelligent as white people . . . ?" Fourteen years ago only 21% of white Southerners answered affirmatively; the figure is now 58%.

*Sampling of Legislation.* Majority opinion favoring equal opportunity does not always find itself translated into legislation, even in the Northern states. The *Reporter*, published by the National Association of Intergroup Relations Officials, in June 1957 summarized the plus and minus aspects of state legislation. The California assembly passed an FEP bill by a vote of 61-15, but defeat was met in the senate labor committee by a vote of 4-2. Other FEP defeats occurred in Illinois, Indiana, Kansas, New Mexico and Ohio. On the other hand Colorado and Wisconsin made their existing FEP laws fully effective and enforceable. On public accommodations new laws were passed or old laws strengthened in Colorado, Oregon, Vermont and Washington; but defeats were met in Kansas and New Mexico. Four states—Massachusetts, New Jersey, Oregon and Washington joined the group which prohibit discrimination in housing built with federal mortgage guarantees; a bill of this kind was defeated in Minnesota. Laws barring interracial marriages were repealed in Colorado and South Dakota, but an effort failed in Wyoming.

*An ACLU Affiliate Report — Illinois.* The Illinois Division of the ACLU, in reporting on civil rights legislation, notes that: the state House and Senate passed a resolution supporting the U.S. Supreme Court decision on school segregation, and laws were enacted prohibiting discrimination on golf courses or in the hiring of teachers. On the other

hand, the House passed but the Senate killed an equal job opportunities bill, one aimed at discrimination in housing, and one attempting to remedy *de facto* school segregation.

*The ACLU and the South.* During March 1957 the ACLU executive director and staff counsel visited in more than 50 major cities and towns of 9 Southern states. Much of their time was spent in interviewing lawyers, many of whom agreed to serve on the ACLU's corps of volunteer cooperating attorneys. Patrick Murphy Malin and Rowland Watts also conferred with several of the ACLU National Committee members in the South: James Lawrence Fly in Florida, Rufus Clement and Mrs. Dorothy Tilly in Atlanta, and Grover C. Hall, Jr., and Aubrey Williams in Montgomery. They met with each of the Union's state correspondents—all of them lawyers—in those states where no ACLU affiliate has yet been organized. Special funds have been allocated within the national office budget for work particularly in the South, and further special funds have been raised for this purpose.

At almost the same moment that the ACLU was organizing this program of support for equal freedom, justice and opportunity for the American Negro, the organization was taking a public position that part of the federal court injunction issued in Clinton, Tennessee against pro-segregationists was too broad in scope and violated freedom of speech and association. Considerable press notice was given by Southern newspapers to the "down-the-line" position of the Union on civil liberties. (See below, pp. 80-81.)

*The Vote.* Assistant U.S. Attorney General Warren Olney, III has described to a Senate subcommittee on privileges and elections the manner in which mass disenfranchisement of Negroes was accomplished in the 1956 federal election. In Ouachita Parish, Louisiana, for example, 3420 so-called affidavits, not sworn to as required by law, challenged the right of individual Negroes in two wards. Many of the challenged registrants appeared to answer, but the registrar refused to hear more than 50 a day. Those not heard were automatically stricken from the rolls; when they sought to re-register, they were asked to give a reasonable interpretation of a clause of the Constitution of Louisiana or of the United States; regardless of the interpretation given, it was declared to be unreasonable. The 4000 qualified Negro voters in these areas as of January, 1956, dropped to 654 in October. Mr. Olney pointed out that the Department of Justice is unable to correct the situation, and that the evil could be cured only by federal court injunction of the kind proposed in the then pending civil rights bills.

In other areas of the South, barriers to registration, large-scale disqualification, or public announcements of an intimidatory nature have largely cut down the Negro vote. Throughout the past year the ACLU

has emphasized that the right of Negroes to vote is fundamental in the entire program to achieve equality for all persons regardless of race.

*Housing.* In 1956-57, twelve states considered legislation barring racial bias in any housing which received public assistance; these were bills based on New York state's Metcalf-Baker law. The legislation passed in Massachusetts, New Jersey, Oregon and Washington; it was referred to a commission for study in Minnesota; it met defeat in New Mexico and failed to reach a final vote in California, Illinois, Maryland, Michigan, Ohio and Pennsylvania.

Legislation was introduced in Connecticut, New York and Minnesota which would for the first time ban discrimination in private housing which does not receive public aid, but did not pass. Laws of this kind would operate under the same principle of public policy which backs fair employment laws in 13 states to date.

Washington joined New York as the second state to ban discrimination in private housing which involves government insurance aid.

Some existing public housing, at present occupied, has developed a severe pattern of discrimination. In Providence, Rhode Island, one unit of low-cost public housing with 767 apartments has only one white tenant; in another unit with 119 apartments all but three of the accommodations are occupied by Negroes. These are 1956 figures, but a 1957 survey by the Urban League indicates only token improvement. State officials, however, claim that integration will be accomplished in six months.

The Federal Housing Administration has issued a ruling denying Federal Mortgage insurance to builders working on publicly-assisted projects who violate the New York state law against discrimination. It is believed that this is the first instance of Federal action to implement a state civil rights law.

With respect to the sale of private real estate, new surveys continue to demonstrate that real estate values do not decrease when neighborhoods take on an inter-racial character, although there may be a brief period of panic sale adjustment of values. In Connecticut real estate agencies and brokers have been declared places of public accommodation; although they cannot control private sellers, they may not aid or abet sales involving a discriminatory standard.

*Municipal FEP.* Baltimore became the thirty-ninth city in the United States, and the first south of the Mason-Dixon line, to adopt FEP regulations. Des Moines became the fortieth city and St. Louis the forty-first —although limiting itself to denial of city contracts to discriminating companies.

*Administration of FEP.* The New Jersey State Division Against Discrimination ordered the Erie Railroad to end discriminatory racial

practices. Sometime ago two Negro "waiters-in-charge" were demoted to "waiter," and the higher rank was abolished; at the same time two white "waiters-in-charge" were elevated to the post of steward, and other open steward jobs were filled by white men. The Attorney General of Minnesota has ruled that under state law employers may require photographs of job applicants only when it can be shown that a photograph is essential to assessing job qualifications.

After five months of conferences between the 18 major airlines operating out of New York City and the State Commission Against Discrimination, it was announced that both the judging of applicants for employment and the upgrading of present employees would be on the basis of merit and without regard to race, creed, color or national origin. It was recognized that certain operational problems would arise from the nation-wide and international scope of airline service. Six months later 16 of the 18 airlines were charged with not having a single Negro employee in a flight-service position (pilots, flight-engineers, radio-operators, stewards and stewardesses, etc.). One attractive Negro girl was refused a job as flight stewardess with rather vague allegations of general lack of attractiveness; she was finally able to pin this down to the lame excuse that her legs were not of the desired conformation. The latest word is that one Negro executive and one Negro helicopter pilot have been engaged.

In journalism the American Newspaper Guild at its 23rd annual convention passed a declaration that it would "continue with every means available to discourage morally degrading and undemocratic discrimination based on difference of creed, color, sex or national origin." The Guild noted that only 38 Negroes out of some 7,500 editorial employees was the current ratio on non-Negro newspapers.

*Constitutional Challenge of FEP Laws.* Testimony has been heard by a review board in Minneapolis on an allegation that a cafe has violated the Minnesota state FEP law by failing to promote a Negro busboy. Attorneys for the cafe have announced that a decision adverse to them will lead to a testing of the Minnesota FEP law. If such a test is instituted the ACLU Minnesota affiliate will enter a friend-of-the-court brief, believing that a U.S. Supreme Court decision prohibiting discrimination in labor union membership will control the judgment on FEP.

*The Cleveland Trade School.* This school, supported by city, state and federal funds, conducts apprentice training programs for a number of building trades. Applicants are screened by a labor-management committee. In the fall of 1956 the Cleveland Civil Liberties Union charged that Local 38 of the International Brotherhood of Electrical Workers excludes Negroes from union membership, with the result that "no

Negroes [are] being admitted to the Cleveland Trade School to participate in that part of the program devoted to training electricians." Subsequently the Cleveland Board of Education settled the Trade School issue by taking over total responsibility for the admission of students to apprentice training. The Cleveland Civil Liberties Union, not satisfied, took the problem to the president of the international and to George Meany, president of the AFL-CIO; these officials set a July 1 deadline requiring the local to give examination to qualified Negro electricians who wished to get union licensing. Examinations were held, on a few hours' notice just short of the deadline, and three of the five examinees were qualified; the Cleveland CLU is further studying the situation to determine whether the particular Negro who constituted the test case was discriminated against in the examination.

**New York SCAD.** The State Commission Against Discrimination reports that in 1953 four citizens of Puerto Rican origin lodged complaints with the Commission; during the first nine months of 1956 persons in this group lodged 155 complaints; the 1956 figures indicate that charges of discrimination on the basis of national origin have risen to 42%, almost on a par with those raising the question of color.

**Places of Public Accommodation.** The ACLU in 1956 congratulated U.S. Attorney General Herbert Brownell, Jr., when he announced that the Justice Department would hold a conference with U.S. attorneys in Southern states to work out methods of compliance with recent decisions by the U.S. Supreme Court barring discrimination in intra-state bus transportation. In issuing the call to the conference, the Attorney General noted that local laws, statutes, ordinances or regulations calling for such discrimination must be regarded as "a dead letter. . . . It is also clear that the enforcement or observance of any such discriminatory measure by any common carrier of passengers will constitute in the future and in the light of the unmistakable declaration of the federal courts a wilful deprivation by the carrier of the constitutional rights, privileges and immunities of those discriminated against and a crime against the United States. Title 18, United States Code, Section 242. Anyone who commands, induces, procures, counsels, aids or abets a carrier in the commission of any such crime is equally guilty. Title 18, United States Code, Section 2."

**"Membership" Club Evasion.** In 1953 certain New York bathing facilities, previously operated as an open commercial public accommodation, became a "membership" club, in order to make possible continuance of a policy barring Negroes. In 1957 the New York Court of Appeals by a 2-1 vote ruled that the pool was still in fact a public accommodation and could not discriminate under its new organizational form.

*Bus Transportation.* In harmony with a long line of previous conclusions the U.S. Supreme Court affirmed a district court holding which struck down an Alabama state law and a Montgomery municipal ordinance as unconstitutional because they required segregation on intra-state buses.

*Housing as Public Accommodation.* The Connecticut Civil Liberties Union supported a bill to define as "public accommodation" any housing unit of five or more groups; the legislature did not act on this bill.

*Lodgings and Food.* Southern California ACLU is intervening on the discrimination issue in a \$78,000 damage suit charging a Los Angeles hotel with racial discrimination in denying accommodations to Negroes. Illinois Division ACLU is studying a report that three prominent citizens of the Puerto Rican community in Chicago were denied service in a South Side bar. In May, 1956 an inter-racial group from the Committee on Racial Equality was denied service in a Chicago cafe, and, when members of the group refused to leave the place, were arrested, charged, and convicted of disorderly conduct. The municipal court judge held that the group should have left the premises when they were refused service, and subsequently sought redress under the civil rights statute; by remaining, they were guilty of disorderly conduct because they might have induced violence by other patrons. The Illinois appellate court refused to accept a friend-of-the-court brief by the ACLU Illinois Division, but reversed the conviction of the CORE group, holding that "the defendants, so long as they conducted themselves in an orderly manner, had a right superior to the rights of owners and employees of the tavern and restaurant business, to enter the premises and wait for service, so long as the place was open and occupied by others enjoying the accommodations of the business being conducted there."

*Extractions, Haircuts, and Toilet Facilities.* In California an appellate court has ruled that a dentist's office is not a place of public accommodation and that treatment may be refused to a person because of his race; another California court has held that barber shops are places of public accommodation and has awarded \$200 damages to a Negro who was refused service. In Princeton, Florida, it is reported that certain large farms furnish three separate toilet facilities—for Caucasians, Negroes, and Puerto Ricans.

*Integration in Education.* Racial integration in the public schools of the United States has gone forward and been set back in hundreds of instances in the past year. But the overall picture is one of forward movement; the *Southern School News Reporter* states that integration has begun in 740 of 3700 Southern school districts, although no progress

at all has been made in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina and Virginia.

*"One Nation, Indivisible . . ."* Buford Boone, editor of the Tuscaloosa *News* and current winner of the Pulitzer Prize for editorial writing, speaking before a West Alabama Citizens Council early in 1957 said: "Our problem is with ourselves, and what we are going to do as responsible American citizens. . . . This United States is one country. We in the South are outnumbered. We don't like what the Supreme Court has said. But we have been telling the rest of the country to go to hell and we can't do that and get away with it." Boone told his fellow-whites that their contribution must be ". . . a willingness to give up some of their traditions and customs so as to share more equally the blessings of education."

The force of these remarks is seen in the decision of the U.S. Army, after several pointed inquiries by then Senator Herbert H. Lehman, to abolish segregated off-duty classes at all of its posts, including installations in the South. As a result of the Army's directive to end segregated classes, the University of Georgia dropped its extension courses at Fort Benning, and a Richmond County school took similar action at Fort Gordon, Georgia. Another "national" organization, the American Federation of Teachers, AFL-CIO, has begun action to expel 3000 members in eight Southern local unions by the end of 1957 if they do not end racial segregation in their ranks by that time.

*Education in New York City.* For many years the New York City Board of Education has had a policy of non-segregation, but a 1956 report by a special citizens committee revealed that 71% of the New York public schools have a population which was either 90% white or 90% non-white and Puerto Rican. This school population characteristic came about because of the general policy of the neighborhood school—in short, a heavy concentration of one race in a residential area produced a segregated school situation. The Board of Education has announced that efforts will be made to create in each individual high school a population generally reflecting the ethnic makeup of the over-all high school population. Paradoxically, this policy may result in pupil assignment and bus transportation to achieve exactly opposite ends to those which these practices serve in areas seeking to preserve segregation. It is not clear at this time whether the policy will be carried out.

*Illinois, West Virginia and Ohio.* The Illinois Commission on Human Relations reports that in 1956 there were 80 all-Negro schools in Illinois exclusive of Chicago; slow but steady improvement in this situation is noted. West Virginia, which rightly takes pride in being one of the first and one of the most vigorous states to implement the U.S. Supreme Court decisions of 1954 and 1955, has nearly completed

integration. West Virginia State College, which had an all-Negro enrollment of 837 in 1953-1954, now in 1956-57 has an enrollment of more than 2,200—1,000 of them white. The Youngstown Chapter of the Ohio Civil Liberties Union has conducted a survey of Ohio higher educational institutions to determine which ask questions of a possibly discriminatory nature on their admission blanks. Among the five state institutions four ask about religion, one asks about national origin, and one requires a photograph; it should be noted that these questions are asked prior to admission, and not subsequent thereto when it might be appropriate to attempt to determine the nature of the college community.

*Tennessee.* In January, 1957, a federal district court approved a plan for gradual desegregation of Nashville schools, beginning in September of this year; new state laws, however, have vested broad power in local school boards in order that segregation may be maintained where the community so desires. In the state as a whole, despite some storm centers, over 300,000 Negro children are now attending school under integrated conditions.

*Florida.* Virgil Hawkins, a Negro, seeking admittance to the University of Florida Law School, won in the U.S. Supreme Court a ruling that he could not be barred; the Florida Supreme Court, however, has subsequently ruled that he may still be barred because of the overriding right of the state to take such action as may be necessary to prevent civil disturbance. Hawkins again appealed to the United States high court; his case has been sent back to Federal district court.

The Greater Miami ACLU has been active in a number of particular cases involving segregation in the Dade County Schools and the expulsion of students from educational institutions for pro-integration activity.

A clue to the temper of Florida public opinion can be found in a survey conducted by the state Board of Control. The key question was this: "Would you admit Negroes now to higher public education in Florida or after a reasonable period of preparation?" At the two state universities, the faculty replied 85% affirmatively, the students 72%, the alumni 46%, and the parents of enrolled students 6%. Among the students, 20% said they would leave if Negroes were admitted.

*Girard College Case.* In 1848, Stephen Girard left a trust fund for the operation of an educational institution which would serve "poor white orphans." Although this is a private institution it is managed by a board of directors set up under state law and the City of Philadelphia provides trustees. The Pennsylvania Supreme Court ruled that Negroes could be refused admission because the institution is private and not subject to the restrictions of the 14th Amendment. The United States Supreme Court has ruled otherwise, holding that the board of directors

"is an agency of the state of Pennsylvania." Most recently, action has been taken to turn the institution over to private trustees.

*Mixed Parenthood.* A Maryland law, enacted in 1715, made it a crime for a white woman to bear a child fathered by a Negro. Two hundred and forty-two years later, in 1957, the law was ruled unconstitutional by a Baltimore judge.

*Attempts to Crush the NAACP.* In "Assault Upon Freedom of Association," a 1957 pamphlet published by the American Jewish Congress, one may read the grim story of segregationist hostility toward the NAACP. In summary language, the report says:

"The record reveals that practically every instrumentality of law and government in the South has been used to persecute the press, the NAACP and the citizens who constitute its membership. . . . Legal processes and procedures have been used and abused to frustrate its legitimate activities. Trumped-up charges have been leveled against it. It has been compelled to expose its membership lists and thus subject its members to the threat of physical injury and economic duress. Registration and tax laws have been invoked against it. In general, it has been the object in some Southern states of a determined effort to destroy it completely."

It is particularly ominous that the attack on the NAACP is completely mounted in eleven states, a larger number than the hard core of resistance to integration of the schools. However, the extremity gone to in some legislation may prove its undoing; for example, the law designed to bar the NAACP from instigating or assisting litigation is so broadly phrased that it would stand in the way of supporting action by virtually any kind of group concerned with the litigative aspects of social problems. The ACLU is at work in defense of the constitutional rights of the NAACP; a friend-of-the-court brief has been filed in the Alabama case involving a \$100,000 contempt fine on the NAACP for failure to comply with a registration law.

*Violence.* Koinonia Farm is an inter-racial Christian colony, a producing cooperative, near Americus, Georgia, which is temporarily forced to support itself largely by selling agricultural products by mail to friends and sympathizers all over the country. Within recent months there have been bombings and other acts of violence, and boycotts of the colony by local merchants. The ACLU has been in constant observation of this situation and has assisted in finding counsel, but the legal issues are presently subordinate to the problem of dealing with a totally intolerant community. In the meantime the general assembly of the Southern Presbyterian Church approved by an overwhelming majority an indictment of racial segregation, warned churchgoers against joining the Ku Klux Klan and White Citizens Councils and specifically came

to the defense of Koinonia. The Atlanta *Constitution* and other Georgia papers have vigorously condemned the violence. A late report indicates no violence, at least, in recent months.

In April, 1957, a Negro family moved into a residential area of Chicago which had previously been all-white. Within a few hours shotgun blasts were fired at the apartment building occupied by the Negroes; those responsible were arrested. Later that day a large crowd gathered and threw bricks, and a mob gathered on the next several days. The special unit of the Chicago police handled the situation expertly, probably as the result of a training program for handling disturbances of this kind.

## LABOR

### 1. External Union Problems

*Right-to-Work Bill.* The Connecticut legislature failed to pass a right-to-work bill; strong opposition came from organized labor, the state ACLU affiliate and other groups. The ACLU has always recognized that legislation of this kind does not necessarily and immediately raise a civil liberties issue; nevertheless, it is impossible to deny that such legislation has been enacted chiefly in states which have a history of repressing the freedom of speech and meeting of workers. (See 1954-55 *Annual Report*, pp. 99-101.)

*Political Expenditures by Labor Unions.* Last year a federal district judge dismissed an indictment of the AFL-CIO United Auto Workers union charged with violation of a Taft-Hartley Act prohibition against the expending of funds by a union in support of a political candidacy. Now, however, the U.S. Supreme Court has declared that a trial on the merits of the UAW case must be held; three Justices believe it unnecessary to hold such a trial on the facts because the legislation involved is unconstitutional under the First Amendment. The ACLU expects to study the general problems of civil liberties and restrictions on political contributions by labor unions, corporations, and trade associations.

*Restrictions on Organizing.* A Baxley, Georgia, ordinance provides that organizers for any group must be licensed (and, if paid, must pay a \$2,000 annual license fee plus \$500 for each person organized). This ordinance has been upheld by the state supreme court and will reach the U.S. Supreme Court in the Fall of 1957; the ACLU will file a friend-of-the-court brief attacking the ordinance.

*Picketing.* A 5-3 decision by the U.S. Supreme Court upheld an injunction issued by a Wisconsin court which ordered suspension of a picket line against an employer with whom the workers had no dispute. In discussing this restriction on organization freedom the minority

dissent held that unions were being deprived of their right to free speech under the First Amendment.

In *Youngdahl v. Rainfair*, an Arkansas court has issued an injunction against all picketing by the Amalgamated Clothing Workers of America on the ground that alleged threats to non-strikers and offensive name-calling is designed to breach the peace. This matter, which will also be before the U.S. Supreme Court this year, will probably witness an ACLU friend-of-the-court brief.

*Lie Detector Tests.* The Sunbeam Corporation of Chicago has agreed to discontinue use of lie detector tests designed to discourage theft by its employees. The company has also restored to his post a worker who refused to sign an agreement to submit to such tests.

## 2. Intra-Union Problems

*Self-Policing.* In January, 1957, the executive council of the AFL-CIO issued a policy statement holding that use of the Fifth Amendment by a union official would be adequate cause for automatic dismissal from his office. ACLU executive director, Patrick Murphy Malin, in a telegram to AFL-CIO president George Meany said that "summary discharge in these circumstances is not in keeping with due process and leads to the conclusion that invoking of the privilege *per se* is proof of untrustworthiness." Malin went on to urge that in such instances a hearing be held which could "determine all the facts surrounding the individual's action, on the basis of which a fair decision" could be made. Later in the year, after Dave Beck, president of the Teamsters Union, had pleaded the Fifth Amendment many times in his appearances before a Congressional investigating committee, the AFL-CIO arranged for an independent hearing at which specific charges would be made and a full defense permitted. The ACLU commended this action.

The Niagara Frontier (Buffalo) affiliate of the ACLU noted that in its area many unions were attempting to extend the Taft-Hartley Act requirement of non-Communist affidavits for union officers to all stewards and committee members. Locally this trend was reversed in two UAW unions.

The ACLU has for a number of years proposed that labor unions set up outside review boards to consider allegations by union members that they have been denied democratic rights and due process within their organization. In 1953 the Upholsterers' union adopted such procedure. In 1957 the ACLU congratulated the United Auto Workers' leadership for proposing a system of this type, particularly urging that local panels of hearing officials assume this responsibility. Walter Gellhorn, ACLU Board member, who has had broad experience in labor arbitration, has urged similar action.

*Discrimination in Wisconsin Labor Unions.* In Wisconsin two Ne-

gro bricklayers claimed that they had been discriminated against by the bricklayers union and appealed to the Wisconsin industrial commission; that agency upheld their claim but could only recommend that the union accept them into membership. On appeal, the state supreme court ruled that the Wisconsin FEP, adopted in 1945, lacked enforcement provisions. A wave of public indignation, shared in by the Wisconsin ACLU affiliate, led the legislature by unanimous vote to enact new law providing fines for employers or unions which breached the anti-discrimination statute.

*Union as Employer.* The U.S. Supreme Court has ruled that the National Labor Relations Board has jurisdiction over wage disputes between workers and an employer which is a union. The Teamsters Union had refused to bargain with a union representing the Teamsters office workers.

## AMERICAN INDIANS

The ACLU, in dealing with the complex of economic, cultural and legal rights of the American Indian, believes that the most effective criterion for sorting out strictly civil liberties issues is embodied in the general principle that the Indian tribes shall have the right to determine whether or not they maintain their traditional way and, of course, to observance of their treaty rights. In line with this principle the ACLU addressed a letter to Senator Neuberger, chairman of the Senate Committee on Indian Affairs, indicating the Union's support of Senate Concurrent Resolution 3 which would reverse recent congressional policy having the effect of ending Indian tribal life, culture and identity. The Union said: "If the members of an Indian tribe wish to continue living as a tribe the government should do all in its power to enable them to maintain their traditional ways. The government should not, as it has in recent years, work unilaterally to do away with organized Indian life in the United States." The Union also supports proposed legislation which would amend Public Law 280 under which responsibility for law and order is transferred—again without consent of the Indians concerned—from federal to state authority.

The National Congress of American Indians asked the Utah Supreme Court to strike down as unconstitutional a state law denying the vote to Indians on reservations. While the case was pending, Utah changed its law and granted the vote. The ACLU was active in support of the Indian petition.

The building of a dam to supply water for Pittsburgh will result in the flooding of large areas of land owned by the Seneca Indians in upstate New York. Although treaty rights are involved, the ACLU does not believe the condemnation of these lands would constitute a violation of civil liberties because the tribe is being afforded the same constitutional rights of protest and fair hearing that non-Indians would receive.

### III. FREEDOM OF BELIEF, EXPRESSION AND ASSOCIATION

#### *THE ROTH, ALBERTS, KINGSLEY AND BUTLER DECISIONS*

*ACLU Position on Obscenity.* For many years the ACLU has been troubled by the fact that alleged obscenity in literature (and relatedly, elements of horror, violence, sadism, etc.) has resulted in general procedures for censorship rather than in specific prosecutions. The Union's policy, as formulated by the national Board early in 1957, takes this form:

The constitutional guarantees of free speech and press apply to all expression, and there is no special category of obscenity or pornography to which different constitutional tests apply. To be constitutional, an obscenity statute at the very least, must meet the requirement of definiteness; and also require that, before any material can be held to be obscene, it must be established beyond a reasonable doubt that the material presents a clear and present danger of normally inducing behavior which validly has been made criminal by statute.

Implicit in the above statement is the Union's finding as a matter of fact that there is a wide range of expert opinion on the alleged causal relationship between allegedly obscene literature and anti-social conduct. And, of course, the ACLU has always objected to the imposition of a standard primarily designed to protect youthful persons when that standard as applied also affects the literature or entertainment available to adults.

The late Jerome Frank, judge of the U.S. Circuit Court, in an appendix to a 1956 decision, reviewed the entire problem of obscenity statutes and raised doubts generally along the line of those which lie back of ACLU policy. In effect, he challenged the U.S. Supreme Court to undertake a comprehensive review of the obscenity problem. The high court was almost immediately able to do so in the Roth, Alberts, Kingsley and Butler cases.

*The Roth Case.* In the Roth case the U.S. Supreme Court ruled that the constitutional guarantee of freedom of speech does not apply to obscene publications. It said: ". . . Protection given speech and the press were fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. . . . But implicit in the history of the First Amendment is the rejection of

obscenity as utterly without social importance." Distinguishing between sex and obscenity, the Court defined obscene material as that which "deals with sex in a manner appealing to prurient interest." The test is whether "to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest. . . ." Furthermore, it was held that consideration need not be given to the "clear and present danger" test because obscenity is not constitutionally protected. As to the defense objection that the federal statute against the mailing of obscene literature was too vague to constitute a criminal offense the Court said the law "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."

Justices Black, Douglas and Harlan dissented. Justice Douglas wrote: ". . . The test of obscenity the Court endorses today gives the censor free range over a vast domain. To allow the State to step in and punish mere speech or publication the judge or the jury thinks has an *undesirable impact* on thoughts but that is not shown to be a part of unlawful action is drastically to curtail the First Amendment. . . . It is by no means clear that obscene literature, as so defined, is a significant factor in influencing substantial deviations from the community standards."

**Alberts Case.** By a 7-2 decision, Alberts, a Los Angeles bookdealer, was found guilty of violating California law against keeping for sale obscene and indecent books, and he was also found guilty of writing, composing and publishing obscene advertisements. The Court ruled that he was not protected from state action by the due process clause of the Fourteenth Amendment since the First Amendment did not protect obscenity. Justices Black and Douglas again dissented.

In both the Roth and Alberts cases Chief Justice Warren concurred in the decisions but on entirely different grounds, holding that "The conduct of the defendant is the central issue, not the obscenity of the book or picture."

**Kingsley Case.** This case involved that section of the New York Code of Criminal Procedures which allows public officials to seek an injunction against the sale or distribution of any book, magazine or printed matter found "obscene, lewd, lascivious, filthy, indecent, or disgusting." The New York Civil Liberties Union, in a friend-of-the-court brief, argued that the law was unconstitutional because it was a prior restraint on freedom of communication. The NYCLU regarded the law as empowering officials, in practice, to seize books they thought obscene in advance of any hearing—although a speedy judicial determination was necessary after the seizure. In a 5-4 decision, with the majority opinion written by Justice Frankfurter, the Court noted that the state could

constitutionally "convict appellants of keeping for sale the booklets incontestably found to be obscene" and could therefore adopt "as an auxiliary means of dealing with such obscene merchandising" the injunctive and seizure procedures provided by state law.

In one dissent, Justices Douglas and Black attacked the New York state practice of banning books without a hearing and without offering any final ruling or finding on the issue of obscenity; they characterized this as "prior restraint and censorship at its worst." In another dissent Chief Justice Warren observed that the New York law provides no standards for judging a book in the context of its use. A third dissent, by Justice Brennan, was based on the absence of a jury trial in the New York practice.

The sweeping nature of these decisions, coupled with the variety and strength of the dissents, suggests that the problem of censorship on grounds of obscenity has by no means been solved. Cases may arise in which substantial evidence will suggest that the obscenity lies in the mind of the reader, the censor, rather than in the intent of the author or—so far as determinable—the nature of the work. Considerable confusion may also arise from the fact that different communities in the United States will have different degrees of sensitivity; it would be most unfortunate if the Roth decision made necessary the preparation of a geographical atlas of the United States indicating "obscenity sensitivity," something along the lines of the annual rainfall index. However, as things now stand, it is clear that the elimination of the clear and present danger test and the dim view taken of the attack on the vagueness of obscenity definition will require strenuous legal re-thinking on the part of those who believe that obscenity laws and the regulations which enforce them constitute a major form of censorship.

***Butler Case.*** The decision in this case represents the only major success in attack upon censorship practice in the United States this year. A Michigan law makes it a misdemeanor to sell any books, magazines, pamphlets, etc. "containing obscene, immoral, lewd or lascivious" material "tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth." In an unanimous opinion written by Justice Frankfurter the Court held that Butler was convicted because "Michigan . . . made it an offense for him to make available a book the trial judge found to have a potentially deleterious influence upon youth. The state insists that, by thus quarantining the general reading public against books not too rugged for grown men and women, it is exercising its power to protect the general welfare. Surely, this is to burn the house to roast the pig." Metropolitan Detroit ACLU filed a brief amply indicating the effect of a juvenile criterion on adult literature.

## **ACLU STATEMENT ON CENSORSHIP BY PRIVATE ORGANIZATIONS AND THE NATIONAL ORGANIZATION FOR DECENT LITERATURE**

In May 1957 the ACLU issued a statement charging the NODL with "censorship of what the American people . . . may read," and charged the group's actions with being "seriously violative of the principle of freedom." The NODL is a group within the Roman Catholic Church established in 1938 by the Catholic bishops of the United States. The statement noted that there are other religious organizations as well as racial, labor, parent-teachers and women's groups who engage in censorship activity, but that emphasis falls on the NODL because of the prominence it has achieved and "the great influence it has wielded in removing books from circulation."

The ACLU statement was signed by more than 150 persons prominent in the fields of publishing, literature and the arts. Included among the publishers were: N. Lincoln Schuster, president of Simon and Schuster, Inc., and Alfred A. Knopf, chairman of the board of Alfred A. Knopf, Inc. The critics included Lewis Gannett and Lionel Trilling. Among the authors and playwrights were: Van Wyck Brooks, Stuart Chase, Marc Connelly, Mark Van Doren, Walter D. Edmonds, A. B. Guthrie, Jr., Moss Hart, Richard Hofstadter, Oliver LaFarge, Allan Nevins, John O'Hara, Katherine Anne Porter, Robert Penn Warren, Irwin Shaw and Edmund Wilson. Theologian Reinhold Niebuhr and Eleanor Roosevelt also signed the statement.

The ACLU noted that a reading committee of mothers of the Roman Catholic faith in the Chicago area determine which books are acceptable; adverse opinions are rendered on magazines, comics and paper-bound books which are believed to be "indecent" and to threaten the morals of young people. The Union asserted that the NODL prepares black lists and threatens and imposes general boycotts and, conversely, awards unofficial certificates of compliance. Pressure is brought to bear mainly on local bookstores, drugstores, and tobacconists. In many cases police, prosecuting attorneys and military commanders on Army posts have issued orders that no book on the NODL list shall be sold in their jurisdiction. The result of these procedures is that "the judgment of a particular group is being imposed upon the freedom of choice of the whole community." The ACLU statement stressed that many of the "banned" books were written by winners of various literary awards and have "been the object of responsible literary criticism and studied in hundreds of literature courses throughout the country." Works by William Faulkner and Ernest Hemingway, each of whom has won both the Pulitzer and Nobel Prize, are on the NODL list.

The ACLU emphasized that it does not "presume to object to the NODL advising communicants of the Roman Catholic Church about any publication" and that no element of censorship exists "in the NODL's informing the general public of its opinion that certain writings are immoral. Such criticism is a right of private freedom and must immediately be protected when threatened." The ACLU also noted that significant differences of opinion exist among Roman Catholics concerning the NODL campaign, and quoted the director of the NODL as saying: "We request government officials not to use the list . . . it is up to the courts to decide if a book is obscene."

**St. Clair County, Michigan.** The prosecuting attorney of St. Clair County ordered two wholesale news distributors in Port Huron not to handle any books or magazines listed as objectionable by the NODL; among the titles so banned were *The Search for Bridie Murphy* and a sex book for teenagers approved by the Detroit Council of Churches, parent-teachers groups and *Parents* magazine. Five publishers of soft-cover books, all of which have titles on the NODL list, were successful in obtaining a permanent injunction against the prosecutor. The NODL disclaims any action, direct or indirect, exercising pressure on the prosecutor to adopt the list.

## **THE GENERAL CENSORSHIP SCENE**

### **1. Newspapers**

Apart from denial of access to government news, a disability which newspapermen suffer in common with others (see below, p. 55), there has been little specific censorship or intimidation of the press during the past year.

One recurring difficulty is the desire of some highly placed government officials, particularly elements in the military high command, to track down and even to punish all concerned with the leaking of government news—even that which is not officially classified as top secret or secret. In the Spring of 1957 a committee composed of the former assistant defense secretary and four retired generals and admirals made three proposals: 1—that reporters be limited to approved interviews with defense officials, 2—that such interviews be conducted in the presence of monitors, and 3—that reporters be called before grand juries if necessary to discover the source of published secrets. Secretary of Defense Charles E. Wilson rejected all the recommendations as bordering on censorship. Immediately after the June, 1957 publication of the Loyd Wright Commission report—which itself proposes penalties upon persons who publish secret information, penalties which would be adverse to freedom of the press—the chairman of that group made a public statement in which he strongly attacked numerous segments of

the press for having disclosed secret information affecting national security over the past several years. Unable to reveal the details of the situations alluded to because of the fact that the information involved is still classified, he nevertheless asserted that there were strong reasons for the enactment of legislation which would permit the punishment of those who publish such information—as well as the punishment, well-established under present law, of those who actually convey the information to the press. The first Congressional reaction to this idea has not been favorable.

*Questioning of Newspapermen.* The New York Civil Liberties Union supported the cases of two newspapermen who refused to answer the Eastland Committee about their associates of a good many years ago in the Communist Party, although speaking freely about their own activities. These cases are probably controlled by the Watkins decision (see above, p. 10); one related conviction has been reversed. The constitutional issue at stake is admittedly a general one involving freedom of association for any person, but it is particularly significant with respect to newspapermen because "association" is both their private and their public business. (See last year's *Annual Report*, pp. 103-5.)

*Treasury Department Newspaper Seizures.* Last year's *Annual Report* (p. 65) told of the Treasury Department seizure of the assets of the Communist *Daily Worker*, and of the ACLU protest against the action as harassment of the Party. Some complaints were received that the ACLU had not concerned itself about similar tax seizures of other newspaper properties. The Union noted that it had had no knowledge of such earlier seizures; an attempt was made to investigate four alleged instances but two letters of inquiry were returned as undeliverable and two others were not replied to.

## 2. Books and Magazines

*U.S. Post Office and Customs Censorship.* The ACLU has always challenged the right of the Post Office to censor, on the basis that it is foreign political propaganda, printed and other matter coming from abroad. For fifteen years, from 1941 to 1956, the Union conceded that a requirement—under the Foreign Agents Registration Act—for identification of the source of propaganda coming from abroad was not an unconstitutional restriction on freedom of expression. But in October 1956 the Board of Directors eliminated this qualifying concession, stating: "The U.S. Government should place no restriction whatsoever on the entry into the United States, and delivery to or receipt by the addressee, of any written, visual or auditory material whatsoever."

Eternal vigilance certainly seems necessary in dealing with this situation. Northern California ACLU recently found occasion to protest to

the United States Customs Service (which seems to operate under principles generally similar to those in effect in the Post Office), refusal to transmit a sealed envelope sent by first class mail from the Soviet Union. Permission was asked of the addressee to open the article "supposed to contain matter prohibited in the U.S. mails," in the presence of a representative of the Postmaster. When the ACLU inquired into the matter the government officials could offer no basis for their suspicion of "foreign propaganda," except the fact that the mail originated in the Soviet Union. Later the ground of suspicion was changed to allege that the envelope contained "merchandise." A request that the grounds for this suspicion be divulged has not yet been answered. In Illinois the *Chicago Daily News* quotes a U.S. Customs official in Chicago as saying that of the 400,000 pieces of mail received last year from behind the Iron Curtain for delivery in Chicago, 150,000 pieces were held and sent to Washington for further checking.

*New Law on Impounding.* Under federal law the Postmaster General may now, at his discretion, issue an interim order impounding mail suspected of promoting fraud, obscenity or gambling. Addressees must be promptly notified of the impounding and may continue to receive mail not connected with the alleged unlawful activity. The impounding order expires in 20 days, notice of petition of extension must be sent to the addressee, and any order of the Postmaster General or the court may be dissolved at any time for cause, including failure to conduct expeditious proceedings. An amendment, proposed by Senator Mike Monroney, was adopted which exempts copyrighted books and publications which have been granted second-class mailing privileges from the force of the law.

In a dubiously legal proceeding the Post Office in Chicago recently dumped about 100 sacks of magazines and pamphlets characterized as "lewd or obscene" into incinerators; the press and photographers were invited to a publicized "bookburning." The Illinois Division of the ACLU characterized the action as "a symbol of tyranny suitable to a totalitarian society but not to a democracy," and expressed regret that the Post Office had not seen fit to heed President Eisenhower's 1953 warning, "Don't join the bookburners." Chicago Postmaster Carl A. Schroeder, apparently mistaking his function, described the confiscated publications as "trash and nudism" which would "subject the youth of the city to material not conducive to good citizenship."

Washington State Chapter of the ACLU is filing a friend-of-the-court brief in a case involving seizure of foreign nudist publications in Spokane by the postal authorities. The Institute for Sex Research, organized by the late Alfred C. Kinsey and operated by Indiana University, has challenged the government's seizure of allegedly pornographic material imported from abroad for study.

**San Francisco Challenges Boston.** In February 1957 the San Francisco Collector of Customs seized as obscene *The Miscellaneous Man*, a literary magazine published in Berkeley but printed in England; objection was taken to the use of a four-letter word as an expletive three times in the text of one story. Later in the year the same official held up importation and distribution of Pierre Louys' *Aphrodite* in the original French text, although an English translation circulates freely in the United States. Finally, 500 copies of *Howl and Other Poems* were seized because of four or five dirty words that appeared in the title poem. The Customs met defeat on all three items; Washington overruled the decision on *Aphrodite* and the San Francisco U.S. Attorney refused to bring proceedings to destroy the other publications. Nothing daunted, those who dislike *Howl* and *The Miscellaneous Man* have lodged a complaint with the San Francisco police and in June the proprietor of a bookstore and his clerk were arrested and accused of violating the California obscenity law. ACLU of Northern California has been active in all these situations.

**State Legislation.** A California bill to prohibit the sale of crime comic books to anyone under the age of 18 did not emerge from committee. The proposed law would have covered both criminal acts by human beings and "acts by animals or any non-human, part-human or imaginary beings which, if performed by a human being would constitute any of the crimes named." The bill did not emerge from committee; it was opposed by the Southern California ACLU. In Illinois the ACLU reporting on three censorship bills which it opposed indicates that all were either killed in committee or failed to pass both houses; the bills provided for textbook, comic book, and "exposé" magazine censorship.

The Michigan legislature considered a censorship law which would require the police to seek an injunction against circulation of a particular publication in order to suppress it; proof of obscene intent and content would be required; the judge would be allowed to consider expert testimony, and the injunction would have to name the class of persons toward whom the work was primarily directed as obscenity. Inspector Melville Bullach, head of Detroit's notorious police censorship bureau, attacked the bill as "apparently written only for the publishers and distributors of smut and other obscene material." The Wayne County prosecutor, Gerald K. O'Brien, said the proposal was worse than no law at all.

Oklahoma now has a state Literature Commission. Its operations have not yet been observed.

The state of Washington has a so-called "comic book statute" which is now being tested, Washington state ACLU filing a friend-of-the-court brief on the constitutional issues. The ACLU brief contends that the

existing law is invalid under either the state or national constitutions, because it requires prior licensing, denies to adults as well as to juveniles access to the publications in question, and so vaguely defines the criminal act that no publisher could be reasonably certain whether a particular item came under the prohibition of the law.

An Ohio "obscene literature" censorship bill did not receive hearings and died with the legislative session.

Massachusetts, in a new law, has provided for strict penalties against anyone who sells, etc., to a child under 18 years of age, any magazine, comic book, etc. which contains "in its text, title, illustrations, or accompanying advertisements, a fictional description or illustration of sadism, masochism, sexual perversion, bestiality or lust, or of the physical torture of human beings." The bill provides that evidence of guilt is the displaying of such literature in a store frequented by children under 18 or adjacent to a primary school or public playground, or if the materials are written in "the vocabulary of the seventh grade or lower." Later in the 1956-57 legislative session a further law was proposed to provide an unpaid advisory commission to assist the Attorney General in preventing the sale of objectionable literature; it was to be constituted of representatives of the three major faiths, an educator, and "three persons qualified by education and experience," all to be appointed by the governor. This bill was killed 32-7 in the Senate. A supporter of the bill stated that although Massachusetts law prohibits obscene literature "no one seems to want to do anything about it. The Commission would tend to bring matters to a head." Another senator, opposing the bill, said: "The Attorney General . . . will try to do his duty. I wonder whether it is a good idea to create a special advisory commission to ride roughshod over him. We can let him do a good job by giving him more money to enforce the present law. I have my doubts about this type of agency." The Civil Liberties Union of Massachusetts opposed both the obscenity law and the installation of an advisory commission.

Confronted by the threat of an extreme censorship law in Minnesota a group of experts, including in their number persons active in the Minnesota affiliate, framed a "model" censorship law, the most significant provision of which called for a careful judicial determination of the fact of obscenity. The result was a stand-off, the 1957 legislature adjourning without passing either law.

*Municipal Ordinances and Other Censorship Action.* Philadelphia ACLU was instrumental in having removed from the state law on comic books certain features which provided for censorship. However, more recently the affiliate has had reason to scrutinize closely the practices of the Philadelphia District Attorney who in addition to handling official obscenity prosecutions has called together representa-

tives of 40 organizations to form a committee to assist him in ridding the city of what he termed "a flood of filth."

ACLU affiliates have also been active in the following local situations: apparently direct police censorship in Arlington, Massachusetts; a Miami regulation, successfully opposed, which would require news dealers to seal magazines unfit for juveniles; a Richmond, California proposed ordinance which would permit police seizure of obscene literature which any person might control, keep or possess—even in his own home; aggressive action by the Cincinnati police to arouse public opinion in support of their drive against undesirable literature; Cincinnati public officials deplored court decisions which have not supported police definitions of "obscene literature"; Buffalo, New York news dealers charged with the sale of objectionable literature; the St. Cloud, Minnesota Advisory Board of Review for Juvenile Readers which held one meeting in the first seven months of its existence and from which 4 of the 7 members have resigned.

Elsewhere the Georgia state Attorney General has ordered the Georgia Literature Commission to abandon its practice of giving dealers 30 days to get rid of publications in order to avoid prosecution; the Attorney General has said that the Commission must either prosecute or "stop calling the magazines obscene." John M. Liddy, district attorney of Oneida County, New York, is reported to have asked cooperation in ridding newsstands of a number of publications cited by a New York legislative committee on objectionable and obscene materials. Liddy said that legal action against the publications was not feasible as they do not fall within the legal definition of pornography; Utica, New York detectives are said to be "doing everything possible" to discourage sale of the publications, including regular checks at newsstands. In different vein, a North Dakota citizens committee appointed by the city commission has reported that present laws to control obscene literature are adequate and that attempts "at legal censorship would be inadvisable and probably unconstitutional."

Despite protests from the Chicago Bar Association and the Illinois Division, ACLU the Chicago City Council adopted a new censorship ordinance forbidding the sale to people under 17 of books, magazines and other publications dealing with obscenity, horror and crime. The ACLU said that "the average book purveyor would be inclined to remove from his shelves any book which anyone complains about, in short everything but what is considered safe for children. The value of free speech cannot be served or preserved by any law which pushes in this direction." There is ground to believe that the U.S. Supreme Court decision in the Butler case may invalidate the Chicago ordinance.

*A Responsible Study in Colorado.* The legislative council of the Colorado general assembly has recently examined the entire background

of the comic book problem, both in Colorado and nationally. Statements were obtained from many experts and from the county judges of the state who have a first-hand acquaintance with problems of delinquency. Most of the psychiatrists regard disturbed family relationships as the primary cause of delinquency. The judges were unable to find any connection between the reading of comic books and delinquency; one judge deplored "the time wasted on something involving at best a very tenuous connection at all, when there are so many things screaming for attention where a connection can be proved." The conclusions reached were: 1—some improvement in existing law, 2—general adequacy of present Colorado statute to punish persons guilty of distributing "objectionable" comic books, and 3—that government censorship "is totally out of keeping with our basic American concepts of a free press operating in a land of free people."

*Other Significant Cases.* The five-year old struggle of *Sunshine and Health* magazine to be offered for sale on the newsstands of New York City has not yet come to an end. The latest action is an application for a court injunction against the city's Commissioner of Licenses. That official is charged with violating the due process clauses of the state and federal constitutions by his failure to notify the publishers of his action or grant them a hearing; it is also contended that the word "obscene," which the Commissioner applied to the magazines "is not a sufficiently definite one on which to found any system of prior restraint. The publishers insist that the magazine cannot be judged obscene by any reasonable standards."

Raid techniques were used in Rock Island County, Illinois, when the sheriff seized more than 1,000 copies of magazines from 11 news dealers in Moline, East Moline, Silvis and Rock Island. The dealers will be charged with the possession of indecent and obscene literature. The Illinois Division of the ACLU is looking into the matter.

The St. Louis city and St. Louis County censorship laws (noted in last year's *Annual Report*, p. 12) are now being enforced; a St. Louis news vendor, fined \$100, has taken an appeal to the St. Louis court of criminal correction. The St. Louis Civil Liberties Committee is cooperating with the vendor's attorney in testing the ordinance.

*Ten North Frederick* by John O'Hara had been available for more than a year in Detroit and Cleveland bookstores and circulating libraries when Detroit Police Commissioner Edwin S. Piggins ruled that the book was not to be sold in any form. Random House and Bantam Books, publishers of the hard and soft-cover editions, obtained a court order enjoining the police from "directly or indirectly" ordering a person to stop selling the book, or threatening to arrest the distributors. When the Detroit Assistant City Attorney told the judge that the police would no longer ban the book but would enforce a city ordinance that

would prevent its sale by retailers, the court said that the police were circumventing the judicial process in violation of the free speech and due process clauses of the Constitution. Despite the court's decision, Commissioner Piggins first said police would still bar the book's sale but later agreed neither to act nor to threaten to act. In Cleveland a police captain announced that "some arrests will be made" if the paper-bound edition of *Ten North Frederick* were not removed from the newsstands. This ban was later denied but newspapers report that the book was withdrawn at the request of the police. The Cleveland CLU pointed out that, quite apart from the merits of the particular publications, suppression of books or newspapers through a threat of arrest is illegal police action.

**Censorship Desired.** At the annual convention of the National Association of Retail Druggists a resolution was presented calling for the establishment of a federal censorship board with power to rule on the obscenity content of magazines and other publications. The Ohio Civil Liberties Union reports that an association of druggists in Cincinnati has compiled a list of some 50 comic books that are being put on "index" for its members.

**Non-Obscenity Censorship.** As noted above, the Illinois legislature failed to pass a bill introduced by Senator Paul Broyles which would censor textbooks; the bill would permit any 15 citizens in a school division to demand an evaluation of teaching materials they consider "antagonistic to or incompatible with the ideals and principles of the American constitutional form of government." The South Carolina legislature has requested the state library board to remove from circulation any books "antagonistic and inimical to the traditions and customs of this state." The legislature was disturbed by the purchase with public money of 16 copies of *Swimming Hole*, a book in which there is a picture showing two Negro boys swimming with three white boys.

### 3. Plays and Motion Pictures

**The Revised Motion Picture Code.** After careful study the ACLU finds the revised Motion Picture Code to be harsher and more restrictive than the old one. The opinion of the Union was presented in a letter by Patrick Murphy Malin, executive director, to Eric Johnston, president of the Motion Picture Association of America. Malin cited the following examples of how the code would stand in the way of the filming of universal classics: Dostoevski's *Crime and Punishment* would be barred because it vividly describes the methods of crime; Shakespeare's *Romeo and Juliet* presents suicide, forbidden by the Code; Mozart's *Don Giovanni* would run afoul of the rule that "passion should be treated in such manner as not to stimulate the baser emotions"; and the *Bacchae*

of Euripides would breach the Code because it does not "carefully and respectfully" handle religious ceremonies. The Union letter particularly noted the problem of *Monkey on My Back*, a film based on a true history. The producer of the film has stated that "it is essential to the story that every member of the audience be repelled by the spectacle of a man caught by the habit"; the scene in which Barney Ross, a boxing champion, actually takes narcotics shows him "at his lowest ebb, at the minutes when he recognizes that his life is gone." The ACLU conceded that there are some improvements in the Code such as the elimination of the blanket prohibition against treating the subjects of narcotics, miscegenation and abortion, but "a full examination of the revised Code shows that there are several new restrictions which, in effect, reinforce its basic rigidity." The Union's basic objection is to restriction on the treatment of opinion about life.

Malin suggested again that the MPAA collect information from experts and from the whole motion picture audience rather than submitting to the opinions of particular pressure groups. It was specifically suggested that the industry solicit the opinion of: 1—a cross-section of movie-goers, 2—experts on the subject to be covered, and 3—psychologists and other social scientists who have some knowledge of human behavior and what stimulates it.

*Baby Doll*. The first showings in late 1956 of *Baby Doll* raised a national furor in which just about every possible point of view on censorship found expression. The Roman Catholic Legion of Decency characterized the picture as "morally repellent both in theme and treatment," and placed it in its "condemned" category. Cardinal Spellman of New York, personally appearing in the pulpit, warned Roman Catholics in his diocese that seeing the film would constitute a commission of a sin. The Very Reverend James A. Pike, dean of the Protestant Episcopal Cathedral in New York City, characterized the picture as a sober and responsible judgment on the facts of human life presenting a situation about which religion might properly concern itself; apart from his judgment as a churchman, he also raised the civil liberties issue of suppression by private pressure group opinion. Later action: the ACLU deplored a 6-month ban on attendance by Catholics at all performances of all films in all Albany, New York theaters which had shown *Baby Doll*; Connecticut Catholics were forbidden attendance. Syracuse and Troy, New York newspapers refused advertisements for the film. A New England theater chain refused to book it; a Jackson, Tennessee distributor was warned by the city council. Gary, Indiana refused to allow the film to be shown and Chicago restricted attendance to adults only. Paris, France Roman Catholics were told they could see the film but attendance was restricted to adults; the Reverend John A. Burke, ecclesiastical director of Great Britain's Roman Catholic Film Institute,

said he could see no reason why adult Catholics should not see the film, and he characterized it as "a brilliant piece of work on a decadent subject." The diversity of opinion on this film is an almost classic example of the inability of sober persons to agree about the nature of obscenity. This divergence has a bearing on the standard of community acceptance promulgated in the Roth, Alberts and Kingsley cases noted above (see pp. 37-39.)

*State and Local Censorship.* The Ohio legislature considered but did not pass a new moving picture censorship bill requiring registration of distributors, investigation by the state Attorney General of any film "being offered or about to be offered" which he had reason to believe violated the Ohio obscenity laws, and eventual test in court at a civil trial by a jury which by a 9-3 vote could find the film obscene and thereby permit an order enjoining exhibition. The Ohio Civil Liberties Union raised numerous questions of freedom of speech and defective due process with respect to this proposal.

In West St. Paul, Minnesota, a theater was closed for 5 days on the order of Mayor John B. Sperl who ordered discontinued the showing of *The Slasher*, an English film previously shown in St. Paul. Later the City Council passed an ordinance providing that films about which complaints were made would be viewed by a three-man police commission. A Maryland state court of appeals has ruled that the two-minute sequence in *The Man With The Golden Arm* showing an addict receiving a narcotic injection does not contravene the Maryland censorship law. A Newark, New Jersey, ordinance designed to outlaw burlesque shows was upheld by a 5-0 decision of the New Jersey Supreme Court, reversing a lower court which had held the ordinance violative of freedom of speech; the U.S. Supreme Court refused review. Among other matters the regulation banned shows in which an actress disrobed or gave "the illusion of nudeness." An ordinance now being considered in Providence, Rhode Island, uses such terms as "obscene," "indecent," and "immoral." The Rhode Island state correspondent for the ACLU requested a public hearing on the ordinance charging that "responsible legislative bodies do not carry out their duties according to law when they pass legislation which is unconstitutional, with the knowledge that it would be economically detrimental and unpopular to contest or challenge the validity of these laws."

Attempts to reinstitute moving picture censorship in Pennsylvania have thus far failed. A Los Angeles film censorship ordinance was declared unconstitutional in a test case involving the showing of *Monika*, a Swedish film which contains a nude swimming scene. The court held that "the phrase, 'in such a manner as to offend public morals' is too lacking in definiteness to satisfy the requirements of due process." The Board of Aldermen in St. Louis has suggested the creation of a motion

picture board of review which would grade pictures and issue warnings designed to "keep very young people from immorality and pornography."

**The Miracle.** After four years of litigation in state and federal courts an Illinois appellate court has finally held *The Miracle* not to be obscene and has ordered Chicago officials to issue a license to the Illinois Division of the ACLU for the exhibition of the film. Although this particular film has now been cleared, the ACLU is not satisfied because it believes that the requiring of a license prior to exhibition is an unconstitutional restraint of free speech. However, it is significant that the appellate court decision places the burden of proof upon the censoring authority; that official group must present evidence of obscenity or the like and make its case.

**Other Films.** Also in Chicago, the Board of Censors has restricted attendance at the picture, *The Bad Seed*, to adults only; the film, which deals with an eight-year-old murderer, was adjudged "controversial in nature."

In nearby Evanston a 1927 ordinance prohibits the showing of any motion picture which is immoral or obscene, salacious or teaches false ethics, or contains nakedness or suggestive dress or prolonged passionate love scenes, etc., etc. No picture may be shown in Evanston without a permit from the police; the Board of Censors includes the Mayor, the Chief of Police and a policewoman. Within the past year, apparently on the single advice of the policewoman, Evanston has completely banned showing of *The Bad Seed*, *Baby Doll*, *Rififi*, *Black Sheep* and *Abdullah's Harem*. The lady censor said she banned *Baby Doll* because it gave a wrong impression of the South and of Southerners, and because she felt that "both sides" should have been represented; in her opinion some of the scenes also played "too strongly on the emotions." Illinois Division of the ACLU is planning to test the unconstitutional restrictions on freedom of exhibition in Evanston.

**A Court vs. Public Opinion.** A United States circuit court of appeals has agreed with the Chicago Board of Censors that *Game of Love* is an obscene picture. In Milwaukee a private showing before the Mayor's Motion Picture Committee—including visiting officials such as aldermen, the chairman of the licensing committee and a civil court judge—also resulted in a unanimous opinion that the movie was obscene. The Milwaukee exhibitor then invited about 800 persons, including doctors, lawyers, clergymen and educators, to attend a private screening. About 400 attended and 326 answered a questionnaire whether they considered the film obscene; 310 said it was not. 20% said it should be shown to adults only. The next day the picture was put on public view

with exclusion of persons under 18; it had a successful run and no attempt was made to ban it.

The Pennsylvania Branch of the ACLU has entered a friend-of-the-court brief in the case of a theater manager who has been sentenced to three months in prison and fined \$300 for exhibiting *Uncover Girls*. In addition to the usual civil liberties arguments the ACLU notes that the judge brought his personal formulation into the decision by banning the picture because it would "corrupt the morals of the immature and the weak."

**Lady Chatterly's Lover.** The New York Board of Regents ruled that this picture was immoral in three specific sequences and in its whole theme: "In line after line and in sequence after sequence, this motion picture glorifies adultery and presents the same as desirable, as acceptable and proper." The defense objected that the 1953 U.S. Supreme Court ruling on *La Ronde* rejected "immorality" as a ground of censorship because the word is too vague and indefinite. But the Appellate Division of the New York courts annulled the Regents' decision and ordered a license granted. The court said: "Ordinarily, such a word as 'immoral' which might have one meaning to one person or a group of persons, cannot be defined with such exactness or precision as would leave no field of individual opinion and discretion open to the viewer." Further, there could be reasonable disagreement about the "dominant purpose or effect" of a film and about elements constituting "acts of sexual immorality, perversion or lewdness"; by quoting this language from the 1954 New York law, the court apparently held that part of the statute unconstitutional, leaving the single criterion of "obscenity." The New York Civil Liberties Union believes that this case, which it has supported, is a further important clarification of the censorship problem.

#### 4. Music and Art

**Walker vs. D'Alesandro.** Glenn F. Walker painted a picture entitled "In a Room," and, by contractual arrangement it was hung in a Baltimore municipal museum. Mayor D'Alesandro, asserting his authority as "conservator of the peace," removed the picture on the ground that it was "morally objectionable," "obscene" and "indecent." The artist sued the official for \$7,500 damages for breach of contract, slander and libel; the Maryland CLU filed a supporting brief. A unanimous judgment, embodied in a 22-page opinion, by the Maryland Court of Appeals ruled that the mayor had acted beyond his authority and that none of the actions complained of, including the mayor's alleged statements about the picture, were within the area of his immunity as a public official.

**Nude Statues.** A store in Beverly Hills, California, displayed a group of figurine copies of original masters of Renaissance art including two

nude statues—one of them Michelangelo's "David." City policy and subsequently the city attorney said that the art violated an ordinance which prohibits nudity in public places and ordered the statues removed. Southern California ACLU entered the case, pointing out: "It's the first time in the history of California and in the last decade in the United States, that any official has claimed that nude objects are obscene merely because they are nude." The court issued a preliminary injunction to keep the police from interfering with the display. Southern California ACLU will also challenge the Los Angeles county deputy sheriffs who ordered a painting removed from a show window, although they agreed that the picture of two nudes could be displayed inside the shop.

*Dallas Public Library.* Last year's *Annual Report* (p. 16) told of the attempt to force from the Dallas Museum of Fine Arts four pictures by artists who were thought to be or admittedly Communist; the situation ended with a ringing declaration of responsible independence by the trustees of the Museum. This year, however, when two pictures by Picasso were shown in the Dallas Public Library public protest again developed, the director removed the works, and the trustees of that institution upheld him. The statement issued said: "Since the mistake was made in displaying the controversial works in the library, we feel that the controversial items should have been withdrawn from the exhibit."

*Rock 'n' Roll.* A. L. Wirin, Southern California ACLU staff counsel and "strictly a Beethoven man" defended rock and roll when a permit for an r 'n' r dance was refused in the American Legion Hall of El Monte, near Los Angeles. He attacked current attempts to ban the contemporary beat as "a monstrous denial of freedom of expression."

## 5. Radio and TV

*Controversy and Diversity.* In April of 1957 Patrick Murphy Malin wrote to Senator Warren G. Magnuson, chairman of the Senate Interstate and Foreign Commerce Committee, expressing the ACLU's concern about the manner in which controversial subjects are handled on radio and TV, and urging a congressional investigation. Malin said: "An inquiry would . . . make clearer to the people, the government and the industry the obligation of radio-TV stations to perform in the public interest, by presenting controversy and discussion of important public issues." The ACLU executive director said that the Union recognizes the danger of government control over program content, and that it was not suggesting an investigation of individual programs; rather "the review should inquire into stations' attitudes toward the presentation of controversy and how they deal with it." The letter referred to the cancellation of the showing of the film *Martin Luther* by a station in

Chicago following protests attributed to persons who objected on religious grounds, to CBS' cancellation of *The Commentator*, a dramatization of a news commentator's right to editorialize, to disapproval by the same network of a proposed radio address by the editor-in-chief of the Catholic weekly, *America*, dealing with issues of inter-faith friction, and to the withdrawal by an interview program of an invitation to a noted physician who had been asked to discuss the recent report alleging a causal relationship between cigarette smoking and lung cancer. The following additional instances have come to the attention of the ACLU and its affiliates: in Southern California a regularly scheduled broadcast by a minister was banned because his sermon dealt with the Negro people's struggle for civil rights and called for passive resistance against segregation; in Washington state a medical program on planned parenthood was cancelled under doubtful circumstances; a New York TV station cancelled its showing of the opera *Manon* when it learned that the Legion of Decency had banned it although no protest had been received from the Legion; CBS refused airtime to one of its own most distinguished commentators, Eric Severeid, when he proposed to discuss Secretary Dulles' policy regarding the Worthy trip to China (a matter of network policy which in the opinion of the ACLU did not raise a civil liberties problem). Relatedly, although not of equal significance, it is noted that the communications industry is careful not to give offense to minority groups and people suffering from physical defects; *Variety* indicates the banning of songs about a stutterer and a cross-eyed person, prohibition of Negro stereotypes and gangsters of Italian nationality, and the elimination of such words as "Chink," "darkie," "Mammy," and even whole songs such as "Old Black Joe," and "Sam You Made the Pants Too Long." Finally, the ACLU has noted with interest the remarks of Federal Communications Commissioner Robert T. Bartley, when he publicly said that a broadcaster "should not be reluctant to take an editorial position in various public issues, but . . . when he takes such a position he should identify it as such, and should take affirmative steps to see that equal time is provided for all other sides of the question." All of this together suggests that the communications industry, and the FCC which exercises stewardship, should—without falling into the pitfall of program censorship—see to it that radio and TV concern themselves more largely and more vigorously with the important issues of the day.

*Libel on the Airwaves.* The Free Speech and Association Committee of the ACLU has reviewed again the problem of slander and libel in relation to radio and TV. The Committee found no reason to suggest that the ACLU should change its position of non-participation in libel suits. It did, however, suggest that the traditional distinction between

slander and libel has been rendered largely meaningless by the size of the public which hears words over the mass media of radio and TV.

The Farmers Union of North Dakota has brought a libel action against A. C. Townley and television station WDAY; Townley, while a candidate for public office, made a statement over WDAY attacking the Farmers Union as planning a Communist Soviet. The television station contends that under Section 315 of the Federal Communications Act it must grant equal time to candidates and has no power to censor speeches by persons seeking public office, and a lower state court has upheld this view. The Union generally supports the provision of the Federal law in question, but if the case is carried forward on appeal the ACLU will follow its development.

*Diversity — Technical Problems.* The ACLU continues to emphasize the need for serious consideration of the relative failure of ultra-high-frequency to establish itself, of subscription TV and of the allocation of channels to educational TV. (See last year's *Annual Report*, p. 22.) During the 1956 presidential campaign the Union restated its support of the Federal Communications Act, and its implementing regulations, which require that equal time be given to political candidates.

In June, 1957, congratulations were sent by the civil liberties organization to the Columbia Broadcasting System on its television interview with the Russian Communist leader Nikita Khrushchev and the subsequent interpretative programs. The ACLU endorsed the CBS position that the American people can judge and decide for themselves about the content of an interview.

But the ACLU expressed concern about a proposal to extend radio-TV licenses from a three- to a five-year term. Patrick Murphy Malin in a letter to the chairmen of two congressional committees, noted that the extension "would lengthen the time in which stations' programming record can be reviewed to determine if a station's operation has been in the public interest, convenience and necessity."

## 6. Access to Government News and Public Records

*Congressional Concern.* Representative John Moss of California, chairman of a House subcommittee on government information, has conducted hearings which indicate that there is probably still a good deal of unnecessary secrecy about government business. For example, a Navy captain wrote an article about the sinking of an American cruiser with heavy loss of life; the Defense and Navy Departments cleared the story and it was published in the *Saturday Evening Post*; nevertheless the author got a letter of censure from the Navy Chief of Personnel, presumably because of the Navy's earlier objection—that publication would dampen the desire of young men to enlist.

In the Moss committee's report to the House, the summary view was

that clarification of policy is bringing some order to the previous maze of federal regulations. However, Moss observed the continuance of a "papa-knows-best" attitude. The report was particularly critical of the Office of Strategic Information in the Commerce Department, created to block the flow of non-strategic information which, although not classified, might be useful to a potential enemy. The ACLU criticized this agency as unnecessary. It has since been dropped from the forthcoming budget. Also the committee report attacks the Treasury Department for its continuing refusal to make public applications for tax exemption from organizations which claim non-profit, non-political status including some types of foundations.

*The State and Local Scene.* Connecticut and Illinois have passed laws permitting greater access to public records and in Connecticut to municipal authority meetings. The governor of Vermont has stated his belief that the press can be barred from policy meetings of state agencies at the discretion of the agency involved. In East Orange, New Jersey, Harry Kranz, a candidate for public office, some time ago attempted to examine the minutes of the board of recreation and the board of water commissioners but was refused access by the mayor. Specific approval for such examinations has recently been granted by a court although it is indicated that no taxpayer has an "unlimited right" because excessive demands would impede government work.

*Juvenile Delinquency.* Lawyers active in the Greater Philadelphia ACLU, the national staff and outside experts have conferred during the past year on the difficult problem of secrecy in juvenile court proceedings. It is often highly desirable that a formal record not be made in court in order to protect a youth against a criminal record. On the other hand the absence of a formal record may deprive him of significant due process, particularly on appeal. The ACLU plans to report on this problem in greater detail.

## **ACADEMIC FREEDOM**

### **1. Issues before the Federal Courts and Agencies**

*Sweezy Case.* The prevailing majority opinion in the Sweezy case, delivered by Chief Justice Warren, saw the constitutional issue as one of the scope and application of an investigating committee's authority (see above, pp. 10-11). Nevertheless, the Chief Justice noted the seriousness of the implications which an investigation of a teacher's remarks would have for freedom of education. He said:

"The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual

leaders in our colleges and universities would imperil the future of our nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

Justice Frankfurter, with whom Justice Harlan joined, concurred in the result but believed the issue to be directly one of freedom of speech, particularly in terms of academic freedom. He noted ". . . the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university . . . in these matters of the spirit inroads on legitimacy must be resisted at their incipiency. This kind of evil grows by what it is allowed to feed on."

*Slochower Case Aftermath.* Last year's *Annual Report* (p. 39) noted the decision by the U.S. Supreme Court that Professor Harry Slochower of Brooklyn College had been improperly discharged merely because he invoked the Fifth Amendment in refusing to answer questions about Communist Party membership put to him by a congressional investigating committee. In 1957, similar questions were put to him by the New York City Board of Higher Education; he did not answer and resigned. Other New York City teachers, who had refused to answer the congressional committee, were refused review of their cases by the U.S. Supreme Court because the federal question had not been properly raised in their cases.

The three Newark, New Jersey schoolteachers dismissed, under circumstances similar to the Slochower case, were held by the New Jersey State Commissioner of Education to be entitled to charges and a hearing. It appears that at least one of these teachers has been restored to his post.

*Scientific Research.* In 1956 the White House announced that it had accepted the recommendations of a committee of scientists and would relax security restrictions governing scientists working on non-secret federally-supported projects. Such projects are now assigned on the basis of the individual's competence and assignments will not be affected by an allegation of disloyalty. This regulation is in harmony with the ACLU's long-held position that a sharp distinction should be made between sensitive and non-sensitive government work.

## 2. State and Local Issues

*The Allen Ruling.* Early in 1957 officials governing the New York City schools and municipal colleges issued an order requiring teachers to "cooperate" in any lawful investigation of possible subversive influences. This meant that teachers were required to answer both for them-

selves and about others. The *New York Times* reported that neither the United States Office of Education nor the National Education Association had any record of such a requirement anywhere else in the United States. Four teachers and a principal who admitted past membership in the Communist Party refused to name their former associates, were subsequently suspended, and appealed to state authorities.

James E. Allen, Jr., New York State Commissioner of Education, noted that, to begin with, the authorities could summon any teacher and ask about Communist Party membership; "In case of denial the Board is still up against the necessity of obtaining proof and the use of an informer is of little value." However, the principal, as distinguished from the teachers, might be required "to report . . . the name of any person in his school whom he knows or believes to be a Communist or otherwise unfit to be an employee of his school."

Commissioner Allen said: "This type of inquisition has no place in the school system . . . trust which is necessary to keep morale at a high level is undermined. No one knows when the finger of suspicion may be pointed at him . . . a school system which sets one teacher against another in this manner . . . lessens the power of the teaching staff to instill character into the student body." New York City challenged this ruling in a state court but the judge ruled that the courts will not upset a Commissioner's ruling unless it is patently unreasonable.

*California Teacher-Loyalty Cases.* A number of California cases, supported by the Southern and Northern California ACLU affiliates, are testing the Dilworth Act which permits dismissal of teachers refusing to answer legislative investigating committees. For example, John Mass refused to answer questions put by the House Un-American Activities Committee and was dismissed in 1953; he had signed a required loyalty oath in 1950 indicating past Communist Party membership. The latest decision is that of the California Supreme Court which has remanded the case to lower jurisdiction in order that Mass may have opportunity to explain why he pleaded the Fifth Amendment. Ordinarily this would be a relatively simple matter, because the teacher would then be questioned by his employing school board; however, in California, the State Education Law appears to require that a hearing be held by a Superior Court of that state.

The Ohio CLU opposed a teachers loyalty oath bill and reports that the measure did not even have hearings in the legislature. Less happily an ACLU-supported bill, giving teachers the right to counsel in hearings involving status or character, also died. The Illinois Division of the ACLU is taking up with the Chicago School Board issues raised by the questioning of three applicants for teaching positions. On their oral examinations they were asked: one, about her husband's writings and affiliations; another, about her connection ten years earlier with a

now defunct organization; and in the case of a third, apparently about her appearance as a friendly witness before a congressional committee studying the Army Security Program. In none of these cases were there charges of Communist Party membership. The Illinois Division is also curious about a question appearing on the "personal inventory" which applicants for teaching posts must submit: "Un-American Activities: Organization, activity." It is rather difficult to understand what this might mean.

*American Legion Activity.* A number of protests and demands by the American Legion, relating to educational activity, have been unsuccessful. The University of Wisconsin refused an American Legion demand that it submit a list of foreign publications received in the Wisconsin library to the U.S. Customs Service to determine if any item is officially banned from entering. The University also refused to prohibit campus activity of the Labor Youth League and to bar University speakers alleged to have engaged in "subversive activities." In Briarcliff Manor, New York an "essential ideas" program, under the direction of Mortimer Adler, was intended to bring together superior students and selected parents. Possibly because of the sponsorship of the Ford Foundation, which has been attacked by the American Legion, the local Legion post demanded cancellation of the program. The Briarcliff Board of Education refused the demand. The University of Buffalo received a protest from the Legion regarding the appointment of Aaron Copland as professor of music, noting that he was listed in *Red Channels* as a "sponsor, affiliate, contributor, or supporter of some 21 Communist-controlled organizations." The University noted Copland's long support of American music and the primary consideration of his competence. Howard E. Wilson, nominated to be dean of the School of Education at the University of California in Los Angeles, was charged with "leftist tendencies" and support of UNESCO by several Southern California posts of the American Legion. The University Regents postponed action but Dr. Wilson eventually took office.

*Texas and Minnesota.* William Moreland served as superintendent of schools in Houston, Texas from 1945 to the time of his resignation in 1957. During these years this administrator has attempted to protect his school system from constant assault by extreme right-wing chauvinism. Attacks have been levelled against any teaching about the UN or the use of UNESCO material; a deputy superintendent was fired because he had become a "controversial" figure; hundreds of Houston teachers have indicated they live in fear of political reprisal. A dominant group on the school board recently interfered and eliminated from use three regularly adopted textbooks. Reporting the Superintendent's resignation, *Time* magazine states: "Dr. Moreland was a voice of sanity . . . We predict: After Moreland—the deluge."

Mrs. Eleanor Moen, proposed as a member of the Minnesota State Teachers College Board, found her confirmation delayed because of her ACLU membership. Mrs. Moen resigned, charging that "McCarthyism" was responsible for the delay and noted the failure of any disinterested party to defend her membership in the Union.

### 3. Issues Within Educational Institutions

*Freedom to Hear Speakers.* A Queens College, New York City, student organization invited John Gates, editor of the *Daily Worker* to speak before it. A Queens College official barred Gates whereupon the City College, another municipal institution, extended an invitation. The presidents of all the five municipal colleges then met together voting unanimously to ban this speaker from their campuses. Gates later spoke before two student organizations at Columbia University. The New York Civil Liberties Union meantime announced that without in any way endorsing Gates views it would attempt to provide a place where he could speak his mind; arrangements were made to hold the meeting at the Martinique Hotel in New York where the NYCLU Board met regularly for its meetings but pressures from other customers of the hotel led to a cancellation of the engagement. No other suitable place could be found.

At Harvard University small but vocal groups of students and alumni attempted to bring about cancellation of the engagement of Robert E. Oppenheimer, internationally known theoretical physicist, who had been asked to deliver a series of lectures of a general philosophic nature. The University refused to yield to the protest since the lecture appointment had been made by the duly authorized faculty authorities after careful deliberation. Good news comes from the University of California where regulations have been rescinded requiring in the presentation of controversial issues at a campus meeting the expression of at least two different opinions; furthermore, there will be no further bar to meetings by groups not formally recognized by the college—chiefly political and religious organizations.

*Dismissals of College Teachers.* The American Association of University Professors continues its investigation of a number of dismissal situations which particularly relate to academic freedom. Catawba College and the University of Nevada were placed on the list of censured administrations; a number of investigations are continuing; censure was lifted from the University of Kansas City, the University of Oklahoma, St. Louis University and Winthrop College. The Academic Freedom Committee of the ACLU completed work upon a statement dealing with "Rights and Responsibilities of Universities and Their Faculties," a 1953 statement by the Association of American Universities

and the related dismissals of two University of Michigan staff members; this statement was released in the fall of 1957.

The late William A. Schaper was discharged from the University of Minnesota staff in 1917 because of his announced sympathy with the cause of Germany in the First World War; there was no allegation that his sympathy had in any way affected his teaching. Twenty-one years later, in 1938, the Regents of the University of Minnesota rescinded their former action because of its "heat, secrecy and arbitrariness"; they awarded the teacher \$5,000 in back pay and appointed him professor emeritus. Now, in 1957, the University announces that the will of Professor Schaper and his wife provides a \$10,000 gift to the University.

*The Student Press.* The student newspaper at Michigan State University charged that an administrative official tried to ban an article critical of the University's suspension policy; despite pressure the article was printed. At Brooklyn College student editors were suspended for their refusal to submit an editorial to the faculty adviser prior to publication.

At the University of California the ballot for the regular fall student body election carried a referendum question asking whether the Board of Regents should be asked to establish ROTC at that institution on a voluntary basis. A pamphlet asking an affirmative vote was banned from distribution on the ground that the election rules did not permit it and that its distribution would cause litter. The Northern California ACLU supported a student group which charged that the University action constituted denial of free expression particularly in connection with the right to vote.

#### 4. Education and Research

*Policy Pamphlets Distribution. Academic Freedom and Academic Responsibility and Academic Due Process*, two of the basic policy statements of the ACLU, were in 1956 reprinted in their entirety in the Autumn and Winter issues of the *Bulletin* of the American Association of University Professors. This printing places the ACLU documents in the hands of the 40,000 members of the AAUP and makes them permanently available in the reference files of all major libraries.

*Fund for Research and Education.* In the spring of 1957 the ACLU national Board of Directors approved the setting up of a fund for research and education in the area of education—notably matters involving academic freedom. The trustees of the Fund have independent authority to receive and spend money; in the light of this financial autonomy, and the nature of the work which will be undertaken, the trustees will request from the Internal Revenue Service tax exemption for donors with respect to any contributions they may make

to the Fund. The trustees are: Louis M. Hacker, chairman, Milton M. Konvitz, Arthur Murphy, treasurer, J. Saunders Redding, and Wellman J. Warner.

## ***RELIGION***

### **1. Church and State: Education**

***Direct State Aid.*** A Massachusetts bill to provide general state aid to all private schools, opposed by the Civil Liberties Union of Massachusetts, met defeat. In Vermont a raging controversy has developed about the payment of state money for bus transportation to parochial schools and for the payment of tuition to Catholic high schools for those students who come to the schools from neighboring townships having no high schools of their own. In 1956 the Vermont Supreme Court ruled against the use of *state* funds but did not touch on the federal constitutional issue and therefore left open the possible use of local money for the payment of the tuition bills. National figures, on both sides of the question, have entered the scene and the division of opinion has also unfortunately matched up in some degree with the alignment of political forces in Vermont.

Opposing state supreme court decisions govern—or fail to govern—determination whether the providing of free textbooks to students in parochial schools is an act in furtherance of the general welfare or a direct aid to a religious educational institution. In Oregon this year the Legislature has modified the definition of "standard" schools eligible for textbooks in such fashion that parochial and private schools can now qualify. The Civil Liberties Union of Oregon protested the measure but found few allies.

The Niagara Frontier (Buffalo) affiliate of the ACLU believes it has established as a fact the use of city-paid physical education teachers in parochial schools. The affiliate has also opposed a plan to set up a Working Boys Home jointly by the County and the Roman Catholic Diocese.

***Bus Transportation.*** The United States Supreme Court ruling in the 1947 *Everson* case held that no federal constitutional issue was raised by the providing of free bus transportation to students in sectarian schools. It left open, however, the question of legality under state constitutions and further questions of statutory interpretation or administrative regulation. Pressure for such support of parochial schools has become widespread and it may accurately be stated that literally hundreds of local school boards are presently confronted by the problem. Only a sampling of the picture can be given. The highest court in Maine has ruled that such provision of transportation is unconstitutional in that state. Connecticut passed a law, not yet tested as to its

constitutionality, giving to individual communities the right to decide the issue. The Connecticut bill was strongly opposed by the Connecticut CLU on the ground that "transportation is . . . a service to the school, not to the pupils." Ridgefield, Connecticut has already approved bus service; the Stamford Board of Education voted it down on the ground that the Board was charged only with administration of public schools and could not in any way concern itself with parochial school students. The Stamford decision was by a 5-4 vote, unfortunately along religious lines. An ACLU representative speaking at the Stamford meeting raised serious questions of administrative feasibility; these may have been recognized and played their part in the decision of the school board but were not dealt with in its verdict.

*Religion and Public School Instruction.* Several Florida counties will begin experimental instruction in "moral and spiritual values." Greater Miami ACLU does not confront this problem in its own county, but will observe the phenomenon on a state-wide basis. The difficulty with such programs has been inevitable introduction of religious sanctions in support of moral and religious values; public school teachers find themselves called upon to discuss religious matters and even to answer questions about doctrine. A California bill would have established an Interfaith Advisory Board charged with preparing teaching materials designed to foster "moral, ethical, and spiritual values"; the bill died in committee.

The Pennsylvania and Philadelphia affiliates of the ACLU report that they are receiving an increasing number of complaints about the introduction of religion into public schools. Particular problems include distribution of Gideon Bibles, instruction by representatives of an evangelical group who have come into the elementary schools teaching the sinfulness and possible damnation of children, mandatory Bible reading, and bus transportation to sectarian schools. The ACLU is giving serious consideration to a test case on the Bible reading issue, because a high school student has registered a protest against this practice; the United States Supreme Court has never confronted this issue directly.

"The Story of Menstruation," a short animated cartoon, has been shown by the PTA in the Levittown, New York schools during the past two years without opposition. Attendance is voluntary. In 1957 the local school board, by a 4-3 vote, ruled that no school facilities were to be used for sex education purposes. In the debate the leader speaking for the majority views cited papal encyclicals opposing sex education in the schools.

The Gideon Bible Society continues its efforts in many localities to distribute its particular version of the Bible to school children, despite the U.S. Supreme Court's refusal to review the Doremus case which

barred distribution in New Jersey. The Colorado and Washington state affiliates have protested this action.

*Signs and Symbols.* The New Hyde Park school board, New York, falling in with the campaign of American Legion posts in three counties, posted an interdenominational version of the Ten Commandments in public schools. A first objection came from those who said that the Decalog had been "doctored" so that "no single Judeo-Christian religion would accept it in its present form." Further protest was made by individuals and groups who regarded the action as a breach of the barrier between church and state. State Commissioner of Education, James E. Allen, Jr. ruled against the display. He said it was not necessary to consider the constitutional issue because he had strong precedent for banning any material which would create tension and thereby make less effective the educational process. In Massachusetts, CLUM successfully opposed a bill to place the motto "In God We Trust" in every public schoolroom.

*Questions about Religion.* The San Carlos, California elementary school system has for a long time asked job applicants to state their religious preference in the papers they file. After protest by the Northern California ACLU this practice has been ended as a violation of state law. The Ohio Civil Liberties Union is studying evidence that one or more of the public higher educational institutions in the state ask persons applying for admission about their religion.

*Baccalaureate and Other Religious Services.* In Moundsville, West Virginia twenty-two Roman Catholic high school seniors refused to attend a baccalaureate service; the superintendent of schools claimed that attendance was required by school board regulations and consequently refused to award them publicly their diplomas at a later commencement exercise. ACLU executive director, Patrick Murphy Malin wrote the superintendent saying: "the regulation which you appear to have felt obliged to support is a gross violation of the First Amendment . . . the Constitution of the United States forbids the use of public authority in imposing religious belief or practice for satisfaction of any certification. Such action infringes upon the religious freedom of the individual and breaches the barrier between church and state." Roman Catholic opposition to inter-faith baccalaureate services in New Jersey and Massachusetts has resulted in such ceremonies being held outside the school.

The Kentucky ACLU affiliate has protested the use of regular public school convocations for hearing representatives of an evangelistic crusade. The Ohio CLU has called attention to the improper merging of public authority and religion in the practice whereby Masonic services have been held at the laying of public school cornerstones.

*Majority Rights.* The late Joseph B. Cavallaro, chairman of the New York City Board of Higher Education, in 1956 asserted that religious training should take place in the public schools in order to satisfy the interests of majority groups. Rabbi Isaac Toubin, director of the American Jewish Congress, in rejoinder pointed out that the constitutional issue involved is a prohibition against public action which has nothing to do with the degree of support which may lie behind such action.

## 2. Church, State and the General Public

*U.S. Census.* After further study the ACLU has reversed its stand on the asking of questions about religion or religious affiliation in the 1960 U.S. Census.

In the summer of 1956 the ACLU objected to questions about belief in God or attendance at church or synagogue. But the Union then felt that "if it is a reasonable use of the government money and manpower to determine the number of persons in a family who attend school or to discover how many Americans own refrigerators, it would seem equally proper to determine the extent of church membership."

The First Amendment states that "Congress shall make no law . . . prohibiting the free exercise" of religion, and shall "make no law respecting the establishment of religion. . . ." The Union now believes that even a "factual inquiry, when made by a government official, might for some persons under some circumstances be an infringement upon the freedom (of religion)." And it would appear that the assembling of information about religious beliefs would aid "some or all religious bodies and thus breach the 'wall of separation' between church and state." These constitutional objections exist whether a reply be voluntary or compulsory. The Union also notes that under present law severe penalties exist for refusal to make reply to a census enumerator. To the argument that the information assembled would be generally useful the ACLU replied that "it is not the use or usefulness of replies about individual belief or church body membership which is the heart of the matter, but the right of the government even to inquire for however good a purpose."

*Dhahran Base.* Protests by the ACLU and other organizations against United States Government cooperation in the exclusion of Jewish soldiers and civilian employees from a Saudi Arabian airbase, appear to have gone unheeded. A recent decision by the State Department has renewed the previous agreement. In this situation the Union has always emphasized the complete freedom of other sovereign nations to set up any standards they wish about who may enter a country, but it remains unalterably opposed to any cooperative action by the U.S.

when such cooperation involves infringement of the constitutional liberties of American citizens.

*Monuments and Observances.* San Rafael, California witnessed a campaign to raise \$9,000 for the erection of a 48-foot concrete cross on public property. Objection by the ACLU affiliate and other groups resulted in an advisory opinion by the city attorney to the effect that "Religion is necessarily sectarian and . . . [although] the maintenance of the cross on San Rafael Hill has become an established tradition of the community and has the wholehearted approval of the great majority of the people in the area, nevertheless it would be offensive to certain non-Christian minorities, and to that extent constitutes a discrimination and/or a preference." In Chicago, the Illinois affiliate of the ACLU protested to the Park District Board a proposed erection of a \$25,000 religious statue; the Board decided not to accept the gift. At least two Ohio cities have witnessed the erection of monuments of considerable size, bearing the Ten Commandments, on public lawns. The Ohio Civil Liberties Union and its chapters have protested this religious invasion of an area set aside under civil authority.

The Minnesota ACLU has publicly opposed use of the emblem of the Minnesota Statehood Centennial Commission because it includes a cross—emblematic of only some religious faiths and thereby discriminatory among religious groups and other persons. The Union's Massachusetts affiliate is in active opposition to the erection of chapels on the grounds of state hospitals and schools for the mentally retarded. Northern California ACLU has made known its opposition to a resolution of the San Francisco Board of Supervisors which requires that flags on public buildings and lands be flown at half-staff on Good Friday.

The opposition of the ACLU to these monuments and observances, it should be noted, in no way connotes hostility toward religion or a belief that government authority should be hostile to religion. The issue is simply one of the co-mingling of public authority and religious expression.

*Adoptions.* The Illinois Supreme Court ruled in 1957 that state law does not bar adoptions where the adopting parents and the child are of different religious faiths. Conversely, the Cleveland CLU reports the refusal of the County Child Welfare Division to allow a school teacher to become a foster-parent to a child of different religious background. The famous Hildy Ellis case appears to have come to an end with the decision by Governor Leroy Collins not to honor Massachusetts' request for the extradition of the Ellises charged with defying a Massachusetts court order and taking Hildy to Florida. Subsequently, a Florida court held that the Ellises are proper persons for the

care of a child and permitted formal adoption. This instance of conflict of sovereignties does nothing of course to settle the fundamental constitutional issue involved—an issue on which the U.S. Supreme Court has refused thus far to render a decisive opinion, and on which the ACLU has long objected to government imposition of over-riding religious criteria.

*Lincoln Square Project.* A massive area-redevelopment project, involving perhaps forty millions of dollars and the re-working of a New York City neighborhood of many blocks, has been objected to on many grounds, in part as improper aid to religion by the state. The issue raised is that of the condemnation of private property and its resale at a fixed price—without public bid—to a sectarian institution, Fordham University. Both the rights of those dispossessed and the interests of the general taxpayer in the non-diversion of public money to religious institutions appear to be involved. The New York Civil Liberties Union is studying the problem which has not yet reached the courts.

*Sunday Observance.* A 3-2 decision by the Appellate Division of the New York Supreme Court has reversed a lower court decision and it is now lawful in New York State for a man to paint his mother-in-law's house on Sunday. The defendant had been charged with violating a law which prohibits labor on Sunday. During the past five years three referendums have been held in Jackson, Tennessee on the question of Sunday movies; public approval has finally been voted. The Minot, North Dakota Ministerial Association is reported to have attempted in 1956 to close local food stores on Sunday.

*Tax Exemption of Religious Groups.* The California Supreme Court has ruled that school property owned and operated by religious groups can constitutionally be exempted from state taxes, basing its opinion on the fact that such tax exemption has existed throughout the entire history of the country, that it is granted in all states, and that it has never been held unconstitutional. The U.S. Supreme Court, two Justices dissenting, refused to review this decision.

### 3. Problems of Religious Freedom

*What Is a Religion?* A District of Columbia tax court has ruled that the local Ethical Culture Society may not enjoy tax-exempt status on its property, in general on the ground that a "religion" must embody worship of a divine Supreme Being. The Society questions the validity of the definition, its exclusory nature, and the authority of government to make a definition of religion. The ACLU believes this to be an important case raising significant issues but has not intervened at this time because counsel for the Society appeared to have

made all the necessary constitutional points in their brief; the Union may act if the case moves to higher courts on appeal.

In a similar case the Northern California ACLU affiliate has intervened on behalf of tax-exemption for a Humanist church in Alameda county.

*Conscientious Objectors.* Orville Cupp, a twenty-year old member of the Air Force, became a Jehovah's Witness more than a year after enlisting. He immediately refused to continue training recruits in gunnery or to salute his commanding officer; two court martial proceedings led to a five and a half year sentence at hard labor, dishonorable discharge and forfeiture of all veteran's benefits. Rowland Watts, ACLU staff counsel, represented Cupp before a review board and the term of confinement was reduced to nine months although the other penalties remained; the soldier has since been discharged. A further appeal is contemplated. In addition to the issue of inadequate Defense Department regulations for the protection of persons who become Conscientious Objectors after entering our military service, the Cupp case raised the possibility of "entrapment." This second issue derived from the fact that, knowing he was a Conscientious Objector, his military superiors nevertheless gave him further orders which they knew he would not comply with. This the review board denied. The head-on conflict of the Cupp case was avoided in the case of two WAFs who became Jehovah's Witnesses; they received administrative discharges. The Marine Corps has granted an honorable discharge in a similar situation involving a member of the Christadelphian Fellowship.

Several interesting collateral Conscientious Objector issues have developed in recent months. Kenneth G. Hanauer, when drafted some time ago, as a Conscientious Objector fulfilled his obligation by two years service in the civilian work program in lieu of military service. Last year when he enrolled at the University of Maryland he was told that he would be required to attend ROTC classes under a general University regulation. Hanauer took his case to court claiming that the ROTC requirement was depriving him of his right to an education and violating his right as a Conscientious Objector. A Maryland County Court judge has ruled that the ROTC requirement is no different to other University requirements such as English courses and physical education. The Maryland Civil Liberties Union has supported this and another similar case. In contrast, the Kansas legislature has recently been reported to be considering legislation which would exempt Conscientious Objectors from ROTC service in state-controlled higher education.

The New York Civil Liberties Union intervened in the case of a person denied a license as an insurance broker because of a recorded prison term—punishment having been for refusal of military service.

An appellate court has upheld a lower court in denying relief. In Tucson, Arizona a substitute U.S. mail carrier has been discharged because he participated in a Fellowship of Reconciliation project to inform graduating seniors of the city's high-schools about provisions in the draft law for conscientious objectors. The local postmaster based the discharge on grounds of "unfavorable publicity."

Marvin Tamarkim, a life-long vegetarian, was re-classified 1-A and ordered inducted only three days before his 26th birthday. He claims that he is a Conscientious Objector because he opposes the destruction of any animal life.

**Pacifist.** The California State Investigating Committee on Education has deplored the activities of pacifist groups in high-schools and colleges. In Fairmont, Indiana a pacifist schoolteacher has been forced to resign. And in New York City there have been continuing arrests and short-term jailings of persons who have refused to take cover, as a form of protest, when air defense drills are held and presented petitions during the drill. Upon study, the New York Civil Liberties Union concluded that the arrests did not necessarily raise a civil liberties issue because the Constitution does not guarantee *every* overt act done in the name of religion (and Federal war powers must be considered), nor does the Constitution provide an absolute right to *choose the time* of petition to the government. On the other hand, a naturalization examiner has granted United States citizenship to a Canadian pacifist, a member of the Church of the Brethren, after eight years of proceedings. Citizenship has also been granted to an alien member of the Jehovah's Witness sect.

**Religious Test — The Citizen.** The Greater Miami ACLU has interested itself in the case of a candidate for a teaching position who has been denied appointment by a school official because of his non-religious views. A technical difficulty arises from the fact that the private educational institution where the man did his work has refused to certify him, such certification being necessary to application.

**Civil Test — The Church.** The California State Supreme Court has upheld a law requiring tax-exempt groups to file loyalty oaths; in several instances this has involved such oaths by church bodies. The Northern and Southern California ACLU affiliates have intervened in these cases and hope to be able to take them to the U.S. Supreme Court. The four judges in the majority held that the limitation was on action and not on belief: ". . . only advocates of the subversive doctrines . . . are affected." One of the dissenting judges said that: "It is one thing for a court to sustain convictions after it has concluded following a full trial that it is dealing with an organization wielding the power of a centrally-controlled international Communist move-

ment; it is quite another to deprive a church of a tax-exemption on the ground that it will not declare that it does not advocate overthrow of the government." Another dissenting judge observed that the legislation "bears no relation whatsoever to the object to be achieved."

*Civil Burden — The Church Member.* The Oregon ACLU interested itself in a bill passed by the State Legislature prohibiting any state institution from refusing admission to or expelling a student because he refuses to attend classes on a particular day or particular days for religious reasons. The issue arose when the University of Oregon ran into difficulty with Saturday classes which several Seventh Day Adventist students refused to attend.

*Religious Broadcasts.* The ACLU has interested itself in a number of situations where stations or networks have cancelled religious broadcasts because the sermon or discussion material was regarded as "controversial." No one of these situations has exactly defined the civil liberties problem but the Union believes that the issue falls under the generally desirable policy of free debate about important controversy.

*A.D. 1692.* The Massachusetts Legislature after a good many years of pressure has finally acted to remove the stigma of criminal conviction from the last group of six among the twenty-two victims of the Salem witch hunt of 1692-93.

## ***GENERAL. FREEDOM OF SPEECH AND ASSOCIATION***

*Minor Parties.* Southern California ACLU is supporting suits brought against the state by Gerald L. K. Smith, Christian Nationalist, and the Socialist Party. These groups claim that getting on the state ballot is too difficult because present law requires either registrants equal to 1% of the total votes cast in the last election or petitions for a place signed by 10% of the number of votes cast; this would mean approximately 41,000 registrants or 410,000 petitioners. A lower California court has recognized the seriousness of the constitutional question and is expediting the movement of the case toward higher appellate courts. The Connecticut Civil Liberties Union opposed a bill which would require 1% registrants or 1% petitioners for a place on the ballot; the bill was enacted over the veto of Governor Ribicoff. Collaterally, another unsuccessful attempt was made to rewrite the New York state election law in such fashion as to curb the Democratic-Liberal Party coalitions which have in several significant elections apparently carried the day; the Governor vetoed the action of the legislature. In Mississippi, Governor J. P. Coleman, as chairman of the election commission, threatened to rule off the November 6, 1956 ballot a group of electors which claimed to be "independent and unpledged"

but allegedly were pledged to the so-called "States' Rights" candidacy of T. Coleman Andrews.

Illinois Division ACLU last year challenged a state law which allows the major political parties to trade and to put up a total of nominees equal to the number of places open. (See 1955-56 *Annual Report*.) The Illinois Supreme Court has approved the existing system.

*Pamphlets and Stickers.* The Seaboard White Citizens Council, attempting to distribute pamphlets advocating racial segregation, discovered that a Charlottesville, Virginia, ordinance prohibited pamphlet distribution without a permit; in this instance the permit was refused. Six persons nevertheless distributed the pamphlet literature and were arrested. The state's attorney freed them for lack of evidence. Subsequently a city councilman proposed an ordinance designed to close Charlottesville's parks to any group brought together to discuss either segregation or integration, but this ordinance failed of passage. Information reaching the ACLU from Charlottesville described the pamphlets as "vicious," made up in part of photo compositions showing whites and Negroes together, and imbued with "venomous anti-Semitism," but despite their unsavory character the restrictions placed upon them appears to have been a violation of freedom of speech.

During the 1956 elections the Securities Exchange Commission issued a memorandum declaring that the use of campaign stickers, while not illegal, could be regarded as "contrary to the spirit of the law," the Hatch Act. However, the SEC chairman—who by the nature of his employment is not subject to the Hatch Act—said he would not object to stickers on SEC employees' vehicles; he himself had four Republican stickers on his station wagon. And a spokesman for the Civil Service Commission said that car stickers could be regarded merely as expressions of opinion not constituting political activity.

The Oregon ACLU is studying a 1955 statute regulating the posting of signs along throughways, and requiring payment of a license fee. Since the license and fee appear to have been applied to political as well as to commercial advertising it may be unconstitutional.

*Restriction on Free Speech by Injunction.* See below, pp. 80-81, for a full discussion of the ACLU position on the Clinton, Tennessee, federal district court injunction.

*"What's In a Name?"* Paul Brown, a mid-West Communist leader, was originally known as Samuel Horowitz. When he applied for a Wisconsin driver's license and car registration papers he was charged with the felony of making a "false statement" on his applications. The court permitted dismissal of the case when it was made known that the common law of Wisconsin allows a person to change his name without going through court procedures.

**ACLU Membership—The Burden and Reward of Office.** James C. Paradise, Cincinnati attorney and president of the local chapter of the ACLU, became the subject of a six-month controversy when he was proposed for membership in the Cincinnati Bar Association. Three members of the Association identified with the American Legion objected because of Paradise' post, charging that he was an officer of an organization connected with Communists, Communist causes, and un-American activities. But another member of the Association said: "If Mr. Paradise is refused membership, the blight will not be on him, but on the Bar Association members who by their actions might repudiate the principles under which we live." The vote: 201 ayes, 82 nays.

Patrick Murphy Malin, ACLU executive director, congratulated the Bar Association for recognizing, in its acceptance of Paradise, the true nature of the ACLU. He pointed out that "the ACLU has repeatedly denied this charge, which we believe arises from the confusion between defending an individual's civil liberties and agreeing with his philosophy. Our single function is to defend civil liberties for everybody, a function which is as sound and American as is the Constitution."

**Nudists.** The Metropolitan Detroit Branch of the ACLU will file a friend-of-the-court brief in the case of six persons arrested after a raid on a nudist camp and convicted of indecent exposure. Detroit police went into the camp while searching for a fugitive from justice; there is some question whether they were provided with warrants.

**UN Picketing.** Last year's *Annual Report* (p. 22) noted the intervention of the New York Civil Liberties Union in the case of individuals who had picketed the United Nations headquarters building, and had been convicted of disorderly conduct. When the cases reached the highest state court in 1957 the convictions were reversed.

**Fluoridation.** The ACLU has received a number of requests that the Union support those opposing fluoridation of public drinking water. Both the Due Process Committee and the Free Speech and Association Committee considered this problem and concluded that such public action was not an invasion of a person's beliefs, religious or otherwise, and did not constitute a violation of civil liberties. No civil liberties question would arise unless there was a denial of the right to present opinions and make official protest.

**Access to Public Records.** A new Illinois law, strongly supported by the Illinois Division of the ACLU, is intended to make really effective access to public records and access to public meetings.

**Right to Travel.** See below, pp. 90-91, for a discussion of State Department restrictions on the right to travel, particularly the Worthy case.

## IV. JUSTICE UNDER LAW - DUE PROCESS

### *INVESTIGATIONS AND ARRESTS*

*Police Brutality.* The Illinois Division is following the case of an admitted alcoholic who was arrested on his way to an Alcoholics Anonymous meeting and allegedly beaten by the police at the station house; the man was later released and hospitalized, and an investigation by the state's attorney office is under way. The same ACLU affiliate is also concerned about the arrest of a man who was later convicted of a narcotics violation and sentenced to a term in the penitentiary. Sworn affidavits have been obtained from three eyewitnesses stating that the Chicago police handcuffed the arrestee and his wife, forced them to sit on the living room floor and conducted a two-hour search of the apartment. These witnesses say that after the couple had been taken away three detectives reentered the apartment and picked up and carried away a considerable quantity of private property. If true, this would constitute grand larceny. The Police Department conducted an investigation at the request of the ACLU but refused to seek prosecution of the officers involved because of "discrepancies" which led the Commissioner to regard the allegations as "not proved."

The Greater Miami ACLU has asked Governor Leroy Collins of Florida to suspend Lake County sheriff Willis McCall for pistol-whipping and holding incommunicado without benefit of counsel a young white woman arrested on a morals charge involving a Negro airman. The ACLU has also asked for an FBI investigation.

Greater Philadelphia ACLU, long dissatisfied with the handling of charges against police officers, built a strong protest around the case of Patrolman William Leader charged with brutally beating and falsely arresting two innocent persons. An investigation by the Philadelphia Police Board of Inquiry, despite overwhelming evidence, found the officer guilty only of the offense of striking a superior officer. The ACLU noted: 1—no action at all has been taken on one of the beatings complained of, 2—a superior officer testified that he knew of no previous complaints against Patrolman Leader despite the fact that there was an antecedent complaint in the files, 3—overwhelming evidence of intoxication was simply disregarded and the victim's reference to the patrolman's drunkenness was "stricken from the record" despite its relevance. In an earlier case a 68-year-old woman operating a newsstand and an 80-year-old woman friend were arrested by Philadelphia police "on suspicion" of numbers writing; neither the arrest nor the searching of the newsstand was with warrant. A few hours after the arrest the news-woman died. The FBI is investigating possible violation of the federal

Civil Rights Act and the estate of the deceased is suing the Philadelphia authorities. Believing such cases to be extremely grave, and that the Police Board of Inquiry is little more than a device for whitewashing accused policemen, the ACLU is urging the appointment of an examining board made up in part of individuals nominated by the Bar Association and charged with conducting hearings at which a full record is made, counsel permitted and cross-examination.

In New York City a victim of police brutality suffered fractures of the neck and back and was hospitalized for 6 months after police had beaten him with fists and nightsticks, kicked him with their feet and thrown him down a flight of stairs. A New York jury has awarded the victim \$40,000. The Union's Buffalo affiliate has been seriously concerned about the death of two men in police detention cells, after their arrest for intoxication, probably because of heart attacks. Buffalo police have been far from cooperative in exploring this problem publicly.

Southern California ACLU is supporting a suit by the proprietor, employees and customers of a Los Angeles cafe asking for \$370,000 damages against 18 Los Angeles policemen. It is claimed that the officers "maliciously, wilfully and unlawfully" conspired to intimidate the victims—who were all Negroes—because of their color; some were made to remove their shoes and socks and stand on a wet floor; the proprietor was imprisoned for nearly an hour while police searched and questioned him. No arrest or charge of any kind was made.

*California 2-Hour Detention Bill.* Legislation proposed in California this year would have permitted a peace officer to stop any person whom he believes to have committed an offense, or to be about to commit an offense, and demand identity, address and reasons for presence at that spot; refusal to answer would permit further questioning and investigation not to exceed two hours; this "detention" is not to be regarded or recorded as an arrest in any official record; at the end of the two-hour period the person shall be released or arrested. Another provision permits the holding of intoxicated persons much as individuals are now held under loose vagrancy charges. Pat Brown, California state attorney-general, who in the past has distinguished himself as a proponent of civil liberties, endorsed the bill and said that he would do everything he could to insure its passage. The state bar of California, the Friends Committee on Legislation, and both Northern and Southern California ACLU affiliates opposed the bill. As finally passed the two-hour detention provision—the most obnoxious clause—was deleted.

*Illinois Detentions.* The Illinois legislature passed, but the Governor vetoed, a bill requiring that persons arrested must be "forthwith" brought before a magistrate. The state's attorney and the Chicago Police Commissioner argued that the ACLU-sponsored law would hamper the arrest of criminals. The Illinois Division of the Union pointed out that

loose detention practices encouraged brutality and sloppiness in police work and also noted that Illinois law makes it a felony to "imprison . . . for the purpose of obtaining a confession or revelation tending to incriminate. . . ."

*Jakubowitz Case.* In Philadelphia, Mr. Jakubowitz was summarily convicted of disorderly conduct in September, 1956, following an arrest obviously resulting from police hostility because he had earlier successfully resisted a shakedown and thus been responsible for the firing of two policemen and the demotion of another. The proceedings on the disorderly conduct charge were clearly devoid of due process and the conviction was later reversed by a higher court. The ACLU is arranging to publicize this event for the education of the police, the magistrates and the public.

*Shoplifting Laws.* Florida has passed a law which permits shopkeepers or their employees to make arrest of persons suspected of committing or being about to commit a shoplifting offense, and to be immune from false arrest suits when so acting. Illinois and Ohio have passed similar laws. Both the affiliates concerned and the national ACLU have indicated their opposition to legislation of this kind as an infringement on the right of an individual to be secure in his person. As matters now stand, twenty states have passed anti-shoplifting legislation of the kind described, some however without granting immunity from suit for false arrest; in the past year legislation of this kind was killed in three states, shelved in another, and from last reports is pending in ten states.

*Wrongful Imprisonment Claims.* Illinois has enacted legislation correcting a situation whereby claims for wrong conviction and imprisonment had to be acted upon by the legislature in session. Now such claims are regular business before the state Court of Claims.

*Due Process and Fire Marshals.* The U.S. Supreme Court has handed down a decision denying the right of persons being questioned about the cause of a fire to have the assistance of counsel. This case, originating in Ohio, received the attention of the local ACLU affiliate.

*The Illinois Scene.* The ACLU Illinois affiliate in addition to concerning itself with matters of police brutality has had occasion to protest instances of illegal detention and false arrest. In one particularly heinous crime a suspect was taken into custody and held by the sheriff at least 90 hours before being brought to a magistrate and charged with a felony. Another case involved a 36-hour detention. In a serio-comic situation, a woman called the police to report gambling and other disturbance at a local saloon; after telephoning she and a companion went to the vicinity of the saloon to watch the arrests take place. With the arrival of the police, the complainant and her friend were arrested and taken to the station house and no other arrests were made. The

women involved are suing for false arrest and the Chicago Police Commissioner has instituted proceedings against the patrolman involved because he made a false report.

*How Many Illegal Arrests?* Any suspicion that the ACLU and its affiliates are unduly sensitive to illegal action by the police can be dispelled by reading a report of the Civil Liberties Committee of the State Bar of Michigan. The report asserts that Michigan police, chiefly in Detroit, make 20,000 illegal arrests each year. Noting that repeated protests by lawyers and others have had little effect the committee urged legislation requiring weekly reports from law enforcement agencies on all arrests made without a warrant and further legislation to permit the erasure of so-called "police records" of persons who have been arrested and released without being charged with any crime.

*Unlawful FBI Action.* The U.S. Supreme Court has reversed the conviction of three persons charged with conspiring to obstruct justice by concealing Robert Thompson, a Communist convicted under the Smith Act. The Court based its action on the fact that FBI agents were shown to have searched a place without warrant and because some of the evidence thus obtained was later introduced at the trial.

*Principle and Practice in New York City.* Stephen P. Kennedy, New York City Police Commissioner, addressing the county bar association asked for guidance on questions of search and wiretapping. He pointed out that evidence obtained unlawfully is nevertheless admissible in the courts of 29 states; 18 states and the federal courts exclude such evidence. He noted that technical and technological advances in modern society have enlarged the scope of operation of the criminal element while law officers have been increasingly circumscribed by legislation and court decisions.

The policeman's problem is a real one but certainly constitutes no justification for the New York City police action in taking from the clothing of Frank Costello certain papers at a time when he was being hospitalized for emergency treatment following a shooting attempt on his life. NYCLU condemned the police seizure, without a warrant, as "an outrageous example of official lawlessness."

In the Silfa case, the police seized without warrants two notebooks and some dental instruments. The judge ordered the material returned to Silfa, but it was later learned that police had photographed and photostated the evidence before returning it. Another judge refused to cite the police commissioner or district attorney for contempt. The New York Civil Liberties Union filed a friend-of-the-court brief in this case.

*Erasure of Record.* The ACLU has filed suit on behalf of Roy C. Wright, a Howard University-law student in Washington, D.C., charging false arrest and demanding that the notation of arrest be expunged

from the record. Wright was arrested, fingerprinted, photographed, placed in a police lineup and confined overnight; he was released the next day without charge. The Union contends that the record of arrest, arbitrary and capricious as the act may have been, seriously hinders Wright's chances for admission to the bar and might keep him from federal employment.

**If You Are Arrested.** The leaflet published last year by the New York Civil Liberties Union, *If You Are Arrested*, has since been reproduced in a national newspaper Sunday supplement with a circulation of two and one-half million and, slightly revised for local use, by ACLU affiliates in Washington, Colorado, Ohio and Florida—some with companion publication in Spanish.

**Criminal Registration Ordinance.** The Philadelphia City Council passed in somewhat weakened form an ordinance, vigorously opposed by the Greater Philadelphia ACLU, requiring every resident of the city who in the past ten years has been found guilty of any of 24 specified offenses to register with the police. Los Angeles, apparently the only other large city with such a law, will have the constitutionality of this kind of regulation passed upon by the U.S. Supreme Court. The Denver City Council in 1956 refused to pass such an ordinance.

**Vagrancy.** The police of some of America's larger cities continue to arrest persons under "vagrancy" laws as a way of picking up suspicious characters and in order to clear the city streets of petty criminals at the time of political conventions and other major public events. Attempts to raise the constitutional issue of arrest without cause have thus far failed because higher courts simply reverse particular convictions which reach them. A New York magistrate, however, has warned the police that proof of vagrancy must be submitted; this includes the requirement that an offer to work be made and refused. The Kentucky Civil Liberties Union intervened in the case of an individual held as a vagrant who had the misfortune to be the friend of the chauffeur of a man who was robbed; the "vagrant" was held in jail for five days because of failure to make bond. Upon motion by the KCLU the charge was dropped. Part of the difficulty in Kentucky is that the state has no law permitting the police to hold a person for investigation or as a material witness; recourse is therefore had to vagrancy charges. In Louisville, in one recent month, 259 such charges were lodged. In many instances the charges are later "filed away," leaving the persons involved with an ambiguous and unresolved police record. Local judges, a prosecuting attorney, and the ACLU affiliate have all condemned this situation.

Northern California ACLU has raised with the San Francisco police the illegality of picking up undesirable characters, charging them as vagrants and demanding \$1,000 bail—twice the sum assessable as a

maximum fine if convicted of vagrancy. The ACLU complaint cites the case of a man who was picked up coming out of a restaurant at 3:30 in the afternoon on his way to a job; he protested without success. The policeman making the arrest brought in three "vagrants" on that one day, but the district attorney dismissed charges in all instances because of lack of sufficient evidence.

*Homosexuals.* The ACLU national Board in 1957 considered the occasional demands which are made upon the Union to defend the civil liberties of homosexuals. The Board held it was not the function of the ACLU to evaluate the social validity of laws aimed at the suppression or elimination of homosexuals, and that overt acts of homosexuality constitute a common law felony. However, it was recognized that homosexuals, "like members of other socially heretical groups, are more vulnerable than others to official persecution, denial of due process in prosecution, and entrapment . . . as in the whole field of due process, these are matters of proper concern for the Union." For example, the ACLU regards registration of persons convicted of crimes, including homosexual acts, to be generally unconstitutional. The Illinois affiliate has been particularly concerned about laws which permit imprisonment for indefinite terms of sexual offenders—in some instances virtually for life. A new Illinois law affords enlarged due process with respect to continuing imprisonment.

*Forced Bloodtest.* In New Mexico a person was rendered unconscious in an automobile accident; while the victim was in that state the police took a blood sample to determine alcoholic content. A positive finding was introduced in evidence at his trial. In a split decision the U.S. Supreme Court failed to hold such action a violation of due process.

*Wiretapping.* Despite almost unanimous resistance by federal investigative agencies and state and municipal police, some progress was noted this year with respect to the elimination or control of wiretapping. The Pennsylvania legislature distinguished itself by passing a law forbidding wiretapping for any purpose whatsoever, with penalty up to a year's imprisonment and \$5,000 fine, unless the consent of both parties to each conversation is obtained. Furthermore, no official use of any kind may be made of any information gained by wiretap. Illinois passed a law banning the use of electronic eavesdropping devices; the governor, however, vetoed a bill prohibiting eavesdropping on lawyer-client conversations. The California legislature passed three measures: 1—a ban on installation of eavesdropping equipment without consent of the owner of the premises where it is placed and the prohibition of the use of such electronic equipment on either public or private property unless notice is posted, 2—the defining as a misdemeanor of any eavesdropping on a confidential conversation between a prisoner

and a lawyer, doctor or religious adviser, and 3—the requirement that telephone companies keep a record of instances where wiretapping has been detected. In these three states the ACLU affiliates vigorously participated in the campaign for wiretap restriction.

The New York Civil Liberties Union has filed a friend-of-the-court brief in three New York courts supporting an application by Joseph (Socks) Lanza to restrain the New York State Legislative Committee on Government Operations from using recordings which were made while Lanza was in a Westchester County jail. These were taped recordings of conversations between Lanza and his attorney. In addition to arguing that Lanza's constitutional rights had been violated, the ACLU urged the courts to enjoin or to suppress the evidence obtained by law officers in violation of the constitutional privilege. The police are standing on the narrow ground that the presence of a third person who overheard the conversation removes it from the protected area. Shortly thereafter a New York judge released a known racketeer from a city detention cell, for a part of a day, in order that he might confer with his attorney. The judge's remarks permitted an inference that adequate privacy of conference was not available in the city institution.

The New Jersey Supreme Court has ruled that county prosecutors must reveal their tapes and observed that: "Wiretapping is not an acceptable means of law enforcement, nor necessary to protect the Commonwealth."

With respect to the secret installation of dictaphones, the U.S. Supreme Court has previously held that such police action is unlawful unless the consent of the owner of the premises is obtained. In Southern California, A. L. Wirin, ACLU staff counsel, suing as an individual taxpayer, sought to restrain the Los Angeles Chief of Police from this kind of eavesdropping. The state supreme court, by a 5-2 vote, ruled: "It is elementary that public officials must themselves obey the law. It has been expressly held in this State that expediency cannot justify the denial of an injunction against the expenditure of public funds in violation of the constitutional guarantees here involved."

*Lie Detector Tests.* Lie detector tests which are used in many areas of the country are sometimes taken voluntarily and sometimes under circumstances which suggest considerable pressure. The Kentucky Civil Liberties Union has entered a friend-of-the-court brief in the case of an armed burglary conviction which resulted in a life sentence. KCLU challenges the admissibility into evidence, over defense objection, of expert opinion concerning the results of a polygraph (lie detector) test. The brief contends that such tests are inherently unreliable as evidence, that prior agreement of the parties to admit them is contrary to public policy, and that compulsory imposition of the tests is a violation of the Kentucky constitutional privilege against self-incrimina-

tion. The brief is enhanced by valuable check-lists of sources of polygraph error, and, in an appendix, names the states which have held such evidence inadmissible.

*Electronic Worries of California.* The Judiciary Committee of the California Senate, on the basis of a two-year study, said that restrictions on the use of secret listening devices are necessary to "promote personal and social ethics based on a greater degree of mutual trust." The Committee found that such devices are being used by law-enforcement agencies, private detectives, business and industry, labor and political groups. A "Buck Rogers" gallery of devices was noted: wrist-watch microphones, pin mikes, pocket recorders, detectographs that can hear through obstructions, etc.

## **DUE PROCESS: THE COURTS**

*Clinton, Tennessee, Injunction.* The Clinton, Tennessee, problem originated with a federal court order that the Anderson County school authorities integrate the high school by the fall of 1956, an order implementing the U.S. Supreme Court decision. The school board complied but opposition developed. John Kasper, from out of state, and certain local persons sought to prevent the order from being carried out; the school board and law enforcement officials requested an injunction from the federal court to enjoin interference with its order. Kasper continued to defy the injunction, was cited for contempt of court and found guilty. The U.S. Circuit Court has upheld both the validity of the injunction and his contempt conviction. Later, 16 persons (including Kasper again) were arrested and charged with contempt by interference with the injunction. In July, Kasper and six others were found guilty, one case was dismissed, and four were acquitted by ruling of the judge and four by jury verdict. An appeal will be taken.

After the contempt citation and before the trial, the ACLU, recognizing the importance and complexity of this problem, asked the opinion of its general counsel, its Due Process Committee and the affiliates. After study, the national Board voted unanimously to the following effect:

1—*The injunction.* The injunction enjoined Kasper and other persons, "their agents, servants, representatives, attorneys and all other persons who are acting or may act in concert with them . . . from further hindering, obstructing, or in any wise interfering with the aforesaid order of this court, or from picketing Clinton High School, either by words or acts or otherwise." The ACLU recognizes that in tense social situations it is difficult to determine exactly where the line of clear and present danger is, where speech goes outside the area of opinion and incites to violence. But the First Amendment requires that

such a line be drawn. The Union concluded that mere advocacy—in the Clinton case urging the ignoring of the law or judicial orders—should not be prohibited. The ACLU of course supports the Supreme Court decision and urges all citizens to obey it. But if some citizens choose to contradict the decision by peaceful means, through speech, they have the constitutional right to do so. Mere picketing to express a point of view, in the absence of intimidation, should not be enjoined. So the Union concluded that “the blanket prohibition against picketing of the Clinton High School is invalid . . . without direct incitement to definite acts of individual or joint obstructiveness or interference, coupled with a clear and present danger that these acts will take place immediately, the injunction is too broad and interferes with free speech.” On the other hand overt acts of “hindering” or “obstructing” cannot claim the protection of free speech. “Whether or not such acts have occurred is a matter of proof to be determined at the contempt hearing. But because a contempt conviction can result in a criminal penalty, we believe the acts prohibited must be reasonably spelled out so that the persons enjoined will know in advance what they cannot do.” The Union believes that this criterion can be applied to the acts of “hindering” or “obstructing,” but not to acts of “otherwise interfering with the court order.”

The summary conclusion was that “to the extent that . . . [the injunction] enjoins overt acts of hindering and obstructing the enforcement of the integration order, it is valid. To the extent that it enjoins speech in opposition to or advocating ignoring of the order, or peaceful picketing for these purposes, it is invalid.”

2—*Contempt of Court Action*. The Board noted that persons who disagree with an injunction can seek relief by appeal to higher courts, and that this is the proper way to proceed. Consequently, “despite the invalid sections of the injunction affecting free speech, we see no civil liberties issue in the contempt citation of John Kasper and his subsequent conviction.” The same principle would apply to the 16 other persons if unrebutted proof shows that the prohibited acts were committed. “However, what may be legally correct may also be unwise. If the injunction violates First Amendment rights, then the punishment for the contempt of an invalid injunction seems unfair.” The ACLU suggested that the trial of the 16 be postponed until the constitutionality of the injunction is determined.

In a less famous case the Colorado Civil Liberties Union has offered its aid to a Rocky Ford clergyman who in somewhat intemperate language wrote to the Colorado Supreme Court accusing the judiciary of abrogating the results of a popular election on the municipal gas operation. He was fined \$50 after being found guilty of contempt. The clergyman apologized for the language of the letter but said that no

contempt was intended, and also pointed out that no case was pending before the courts.

**Confessions.** The U.S. Supreme Court set aside the death sentence imposed on William Earl Fikes for burglary with intent to commit rape, holding that the confessions obtained from him had been forced. The Illinois Legislature passed a law, to which the local affiliate gave support, making confessions taken by the police available to defense attorneys at least 24 hours before the time of trial.

**Mallory Case.** In the Mallory case the U.S. Supreme Court voided a sentence in a rape case; the Court ruled the confession used by the prosecution to be inadmissible because the District of Columbia police held the defendant incommunicado during the time the confession was made.

**Self-Incrimination, Immunity.** The Kentucky Civil Liberties Union has filed a friend-of-the-court brief in the case of Henry Rhine. He, appearing as a grand jury witness, refused to answer certain questions holding that they might incriminate him. A Kentucky court upheld Rhine and the state appealed. The ACLU brief asked: "is the witness privileged from answering because his answer to . . . the questions could tend to incriminate him of federal offense?" It was pointed out that a witness' claim that incrimination might result should not be received with skepticism and that the burden of proof should be on the state to show "that no conceivable answer would bring the witness nearer to the penitentiary."

**Due Process in Juvenile Delinquency Cases.** In the District of Columbia a 15-year-old boy admitted to taking an automobile without the owner's consent and was committed to a training school. The ACLU entered the case on the ground that he had been improperly denied counsel. The Juvenile Court and the Municipal Court of Appeals ruled against the youth but the U.S. Court of Appeals, noting that a juvenile is entitled to be represented by counsel if he or his parents choose to furnish one, held that the Juvenile Court must advise a youth of his right or assure itself that the right has been intelligently weighed; also where there is no waiver or where the family is indigent the court should appoint counsel.

In Philadelphia a 17-year-old boy spent 8 weeks in jail for a crime he did not commit and was freed after joint efforts by community leaders and the ACLU Greater Philadelphia Branch. The charge was mugging. In such proceedings the child is not on trial. The ACLU noted that the district attorney acts as a prosecutor. The judge receives hearsay reports unavailable to the child's lawyer and it is a matter of the court's discretion whether the boy be given the benefit of such due process provisions as cross-examination and the opportunity to present his own

witnesses. A more careful investigation in this particular case disclosed that the boy could not have committed the offense he was charged with. One improvement in the Philadelphia situation is that the police now notify parents as soon as a young person is arrested and permit telephone conversations.

*Parental Responsibility; Ohio Legislation.* A bill was proposed granting a judge authority to order the parents of a child, "charged with delinquency" but not necessarily found to have committed such an act, to impose upon the child "reasonable parental control and authority." Also, a second delinquent act would be *prima facie* evidence that the parent had violated the judge's order, and subject the parent to penalty for contempt of court. The Cleveland chapter of the Ohio Civil Liberties Union, buttressing its arguments with opinions expressed in articles appearing in *This Week*, *Newsweek* and *Harper's Magazine*, opposed the bill on constitutional grounds. As finally passed, the "*prima facie*" and "contempt of court" features were eliminated.

*Pennsylvania Non-Support Laws.* The Pennsylvania ACLU was instrumental in inducing the State Department of Justice to introduce new laws regulating non-support. One provision would call for a person charged with non-support to be brought before a judge within 48 hours, thus correcting a recent situation in which a man lingered in jail for 30 days and turned out to be a case of mistaken identity. The other legislative revision would prevent imprisonment of a man for involuntary failure to post "compliance bonds" when he was too poor. The need for this change was emphasized by the fact that in 1955 a man was sentenced to life imprisonment for failure to post a \$2500 bond when there was no indication that he had any such sum at his command; he was actually in prison 14 months.

A New York state supreme court justice has pointed out that civil prisoners have none of "the benefits of those in criminal prisons—maximum sentence, time off for good behavior, and review by parole board." He made this statement in freeing a man who had been in "alimony row" for 16 months, penniless, and uninformed about the way in which to obtain counsel. The judge suggested that some limits be set to alimony debt sentences and that provision be made for automatic review of such cases at stated intervals.

*Right to Counsel.* In Michigan a man was arrested at 10:00 p.m. and by 2:00 a.m. of that same night had been sentenced to life imprisonment. No member of the public was present at the trial, where the prisoner entered a plea of guilty. The Metropolitan Detroit Branch of the ACLU has filed a friend-of-the-court brief before the U.S. Supreme Court protesting the denial of a public trial and objecting that a plea of guilty did not carry with it any implication of rejection of counsel.

Caryl Chessman, who has achieved distinction as a writer during his eight years in the California death house, had his case remanded for further determinations by a 5-3 vote of the U.S. Supreme Court because neither he nor his lawyer was present when a lower California court heard argument about what was actually said at Chessman's trial.

The right to counsel would, of course, be seriously abridged if lawyers later received penalty or public condemnation because they had done their best for an unpopular client. In 1956 in New Jersey, former Superior Court Judge John O. Bigelow received an adverse verdict by a majority of the state Senate Judiciary Committee when his name came up for appointment to the Board of Governors of Rutgers University. Objection was made to him because he had represented a school teacher who had invoked the Fifth Amendment before the House Un-American Activities Committee and because he testified he would not automatically bar a teacher who invoked the privilege against self-incrimination. The ACLU, several bar associations and leaders in New Jersey and national life protested vigorously; although the Committee again turned down the nomination, the Senate itself approved Judge Bigelow.

The ACLU statement of protest said "admittedly, ignorant and non-critical members in the community will at times improperly identify client and attorney in their beliefs or disliked actions. This is a risk which lawyers run, but there is no doubt that they must take this chance," and it was pointed out that the canons of the American Bar Association emphasize a lawyer's responsibility to give his client full defense. "But it is grievous beyond words," the ACLU continued, "if a person is rejected for an office of public trust because he represents a particular client. Such an attitude would make it exceedingly difficult for many persons to obtain competent counsel, attorneys of all degrees of distinction would be obliged to weigh in the balance their personal future as against their sacred charge to serve justice."

Candidates for the post of District Attorney in Los Angeles have been asked by the board of supervisors "Did you ever represent hoodlums, ex-convicts or gangsters?" The Southern California ACLU affiliate has characterized the questions as "unfortunate and irrelevant and redolent of a "guilt-by-client" implication. It was pointed out that it is an attorney's duty under the American Bar Association's Code of Professional Ethics to represent all kinds of persons, and no inference should be drawn about the character of a lawyer from the character of his clients.

*Admission to Bail.* The Hartford chapter of the ACLU was asked to give legal advice to a Hartford, Connecticut, citizen who, when arrested on a breach of peace charge, was told that he would not be released on bail unless he consented to being fingerprinted. Note also above (p. 83) the compliance bond problem in non-support cases.

*Ex-post Facto Law.* Peter McGaha, an escaped convict from a South Carolina prison, was caught in Indiana. Extradition proceedings were instituted but McGaha claims that he was convicted of murder in South Carolina on the testimony of fellow prisoners. At the time of the conviction such testimony was incompetent under South Carolina law—although the legislature of that state later made it admissible. ICLU is making further attempts to obtain the original record of the case, and the decision on the extradition issue will probably await the examination of those papers.

*Habitual Criminals.* The Indiana Civil Liberties Union has also intervened in the case of Martin Carkeek who is serving a life sentence in California as a habitual criminal. He can be freed in California if he can have set aside a sentence imposed for another crime in Indiana twenty years ago, a proceeding in which he was not represented by counsel. A first determination is in Carkeek's favor but it is not yet known whether the state of Indiana will appeal.

*Trial in Absentia and Judgment by Proxy.* A California insurance salesman was arrested for drunken driving and at his first trial on January 24, 1957, on which occasion he was both present and represented by counsel, the jury was unable to agree. A second trial was set for January 28 but in the meantime the defendant had gone to Arizona claiming that he needed money, was out of work and could get a job there. He wrote the judge stating that he had been called out of town on business and would get in touch with the court when he returned. But the second trial was held, a jury convicted and the judge imposed a fine of \$500—without presence of the defendant, who was represented by an attorney appointed by the court just before the proceedings. His attorney and the Northern California staff counsel filed a petition for writ of *habeas corpus* which was granted with bond set at \$1000. It should be noted that California courts permit trial without the presence of the defendant but with counsel in misdemeanor cases. The California Supreme Court has upheld the conviction; a petition is before the U.S. Supreme Court.

The Kentucky Civil Liberties Union has filed a friend-of-the-court brief in *Brown v. Hoblitzell*, a case which resulted in a conviction of seven misdemeanors. The judge appointed a trial commissioner to hold a hearing; after the hearing, the judge, who had not heard the evidence, entered judgment.

*Summary Contempt Conviction.* In a Washington state court, immediately after the conclusion of a trial, the judge summoned two witnesses before him, told them their testimony had been willfully false, and fined them and sent them to jail on the ground that their testimony constituted contempt of court. The Washington State ACLU

affiliate, arguing on the constitutional issue before the state Supreme Court, gave full recognition to the harmful effect of perjury and the need for its punishment; but it was also contended that neither the Constitution nor the laws of the state specifically include the power to punish a lying witness for contempt, and that the punishment was in excess of that permitted under the law in such a situation.

*A Re-Sentencing Problem.* Two years after a man had been tried, convicted and sentenced, it was discovered that the original sentencing was defective, and the prisoner was given a new sentence. On appeal, the U.S. Supreme Court held that the two-year delay in the imposition of a valid sentence did not amount to deprivation of the constitutional right to a speedy trial and did not violate the prohibition against double jeopardy.

*Serving Sentence.* The Illinois legislature has enacted into law a bill, supported by the ACLU, which would credit to sentence terms the time served in jail prior to transfer to prison or reformatory. The St. Louis Civil Liberties Committee drafted for presentation legislation of the same kind, when a study revealed that prisoners sometimes spent four to eight weeks in jail prior to transfer to a penitentiary—this time not counting toward serving of sentence.

*Civil Rights of Prisoners.* The federal civil rights law allows damage suits to be brought against persons who under the color of law deprive an individual of his constitutional rights. Claiming the protection of this law, George Atterbury, until recently a prisoner in Illinois, has sued prison officials for \$200,000 in damages, alleging that they inflicted serious physical injury upon him while he was in confinement. The U.S. Circuit Court of Appeals in Chicago ruled that the civil rights act did not apply because the alleged conduct "is contrary to the laws of Illinois" and that there are state remedies to correct the situation; this ruling barred Atterbury from a hearing in the federal courts on the alleged mistreatment. Four Illinois cooperating attorneys worked on the case and the national ACLU, considering it one of the most important civil liberties issues of the year, gave full support, but in May, 1957, the U.S. Supreme Court refused to review the case.

*Indigent Petitioners.* The Connecticut Civil Liberties Union supported a bill which would have permitted a person without funds to file a writ of *habeas corpus* and to appeal to the state Supreme Court from the denial of the writ even though he lacked money to pay filing fees and court costs. The bill failed to pass. Metropolitan Detroit ACLU, in a narcotics conviction case being appealed to the Michigan Supreme Court, discovered that the defendant did not have sufficient funds to pay for the required printed copies of the brief and court proceedings which would constitute the record on appeals; petition to submit typewritten

materials was denied. Colorado ACLU is also interesting itself in the problem of indigent or pauper defendants.

*The Fifth Amendment and Credibility.* In the Halperin case the defendant pleaded the privilege against self-incrimination when examined by a grand jury; subsequently, at his trial he testified on the matters about which he had refused an answer; the government, cross-examining, asked why he now testified about matters regarding which he had invoked the Fifth Amendment before the grand jury. The trial court permitted this inquiry by the prosecution as a legitimate testing of the defendant's credibility. On appeal, the U.S. Supreme Court held that since the pleading of the Fifth Amendment did not imply guilt, it was not contradictory of a later plea of innocence and therefore not properly usable to impeach credibility.

*Curbs on Statements by Lawyers.* The New York state bar association has revised its canon of ethics to prohibit lawyers from issuing press releases, statements or other information relating to pending cases through any of the ordinary means of public communication, if the purpose or effect of such statements is to prejudice or interfere with a fair trial. A bar association official said: "The Sixth Amendment guarantees trial by an impartial jury. To permit attorneys to influence juries by giving out public statements, which may even include material which the court has ruled inadmissible in evidence under the law obviously impairs this constitutional right." The new rule would not bar divulgence of statements made in court or quotations from public records or statements intended to mitigate or contradict the effect of adverse statements about an attorney's client. The State District Attorneys Association and others oppose the canon on the ground that it would interfere with freedom of the press and the prosecuting attorneys and make it harder for lawyers to protect the interest of their clients.

*Transcript of Record.* Last year's *Annual Report* (p. 55) described the refusal of a judge to release to the newspapers the transcript of his charge to the jury in a criminal case. The highest court in New York State has ruled that the business of the courts is public business and that no such refusal may be made.

*The Girard Case.* An American soldier, W. S. Girard, stationed in Japan, while on a firing range discharged an empty cartridge case which killed a Japanese woman. There are disputed questions of fact as to whether the shooting was "in the performance of official duty"; the Secretary of State and Secretary of Defense waived their treaty right to insist upon a trial by court-martial, and ruled that he could be tried by a Japanese court. On a *habeas corpus* petition, a U.S. District Judge ruled otherwise and the case sent to the U.S. Supreme Court because it

required significant judgment on the "status of forces" agreement between the U.S. and another sovereignty.

The ACLU studied the problem and noted that American citizens abroad are generally subject to local laws and local courts; the U.S. Constitution does not have extraterritorial effect. If a "status of forces" treaty or other agreement confers the right of military personnel to be tried by American authority, under special circumstances, such right is acquired as a privilege. This privilege may be waived by the proper U.S. authorities.

The U.S. Supreme Court, met in special session on July 8, 1957, and ruled no constitutional right was involved.

*Military Jurisdiction: Soldiers and Their Wives.* Two Army wives were convicted by court-martial of murdering their husbands, who were on active duty—one in the Far East and one in Europe. Tried by military courts and sentenced to death—the sentences were later modified to life imprisonment—they brought their cases before the Supreme Court in 1955 on the jurisdictional issue of the proper court for trial; an adverse 5-3 decision was reversed in 1957 by a vote of 6-2. The Supreme Court finally held that these persons were not members of the military forces and therefore not subject to the special regulations limiting civil liberties in military trials. As civilians they were therefore entitled to trial by jury. The court held the "cases particularly significant because for the first time since the adoption of the Constitution wives of soldiers have been denied trial by a jury in a court of law and forced to trial before courts-martial." The court rejected the claim that agreements with foreign countries and the act of Congress which authorized them could be "free from the restraints of the Constitution." But the court did not indicate what a proper tribunal would be, or where or how it could be constituted.

*Shibley Case.* George E. Shibley, an attorney, defended a marine before a military court-martial; in the course of those proceedings he made charges of wrong-doing against military officers. Forcibly brought before a military court of inquiry, the lawyer was asked to retract or reveal the sources of his information; refusing, he was cited in Federal district court for contempt of a military tribunal but was acquitted. He was immediately charged with contempt of the civilian court for his conduct in his own defense against military contempt. He was sentenced to thirty days. Subsequently, he was indicted for actions alleged in connection with the original court-martial. Specifically, he was charged with entering on a military reservation with intent to steal, stealing a copy of the transcript of the court of inquiry, receiving stolen government property, and conspiracy. Conviction on the receiving and conspiracy counts resulted in a three-year prison term and subsequent disbarment. A motion for a new trial charging suppression of evidence

by the prosecution was denied. The U.S. Supreme Court refused to review.

Rowland Watts, national ACLU staff counsel, believes that this case leaves unresolved three important civil liberties questions:

1—the right of the military to seize a civilian and force his attendance at a military court of inquiry, 2—the manner of contempt proceedings against attorneys for their conduct of a defense, and 3—the responsibility of a prosecution to make available to a defendant any information of possible value to him.

*TV and Photography in the Courtroom.* In 1956 the Governor of Rhode Island vetoed a ban on radio-TV and photographic coverage of courtroom proceedings, and the Texas Bar Association has dropped a resolution banning such coverage.

In Pennsylvania the State Supreme Court upheld the criminal contempt convictions of seven responsible newspaper publishers, editors, reporters and photographers who had violated the proscriptions set down by a country court rule barring photography within 40 feet of the entrance of the courtroom and the taking of pictures of a murder case defendant in jail or on his way to or from court. The State Supreme Court said that "maintenance of the court's dignity and the orderly administration of justice" was at stake and that freedom of the press in this case was immaterial.

## ***DUE PROCESS: FEDERAL EXECUTIVE DEPARTMENTS***

### **1. Citizenship, Passports and Visas, Deportations**

*Expatriation of American-born Citizens.* Mitsugi Nishikawa, an American-born citizen of Japanese descent, was conscripted into the Japanese Army during the war. Clemente Perez was in México during World War II and voted in that country's elections. Immigration authorities claim that the actions of Nishikawa and Perez amount to constructive renunciation of citizenship. During the past year both cases were presented to the U.S. Supreme Court, but reargument has been ordered for the October, 1957 term of that tribunal; the ACLU California affiliates submitted friend-of-the-court briefs.

*Trop Case.* Albert L. Trop, a native-born citizen, was confined in Casablanca in 1944 for a breach of army regulations; he escaped and was free for about 24 hours, but did not desert to the enemy nor attempt to become a national of another country. A court-martial convicted him of desertion and he subsequently received a dishonorable discharge. In 1952 Trop applied for and was refused a passport, the State Department claiming that the dishonorable discharge on grounds

of desertion had lost him his American citizenship. The United States Supreme Court heard the case in May, 1957 and in this instance has also ordered reargument this fall.

Three other significant cases involve native citizens. Northern California ACLU has intervened on behalf of Rufus Bean who is charged with having expatriated himself by failure to report for army induction. Another Northern California case concerns a native-born citizen alleged to have lost his status by membership in the Komsomol while in Soviet Russia. A favorable decision was given by the Board of Immigration Appeals in the case of Mrs. Zaidee Jackson, born in Georgia, who had to remain in Roumania for several years during which time she made numerous unsuccessful attempts to return to the U.S. The immigration service had claimed that she accepted government employment in Roumania, therefore, losing her American citizenship. But the ACLU pointed out that since virtually all work in Roumania was necessarily in government-owned or government-controlled establishments, Mrs. Jackson had no real choice.

*Denaturalization Cases.* A federal Court of Appeals has ruled that the concealing of Communist Party membership at the time of naturalization in 1938 is ground for denaturalization. On the other hand, a federal court has ruled that Rose Chernin (convicted of violation of the Smith Act in 1952) should not suffer cancellation of her citizenship on the ground that her 1929 oath of allegiance was necessarily invalid because she was a Communist; the court regarded the evidence as not clear and convincing on the issue of fraudulent intent.

*ACLU Testimony on Passports.* Irving Ferman, ACLU Washington Office director, in April, 1957 testified before the Senate Foreign Relations Committee emphasizing that the ACLU "has taken the position over the years that international travel is part of the basic freedom of persons involving the freedom of movement." Questioned by committee members, Ferman indicated that one proper ground for the denial of a passport would be "substantial evidence" before the State Department that a passport applicant was going abroad to engage in subversive activity against the United States. But "the mere fact that he is a Communist," should not be a barrier to travel. Furthermore, particular judgments should be based on clearly defined standards and related to evidence.

*The Worthy Case.* An American newspaperman, William Worthy, Jr., was one of three reporters who visited Communist China in the winter of 1956 despite a State Department ban. When Worthy's passport expired on March 4, 1957, the journalist applied for a new passport. A preliminary refusal was followed by a hearing and a definite adverse ruling; the matter is now before the highest administrative re-

view board. The ACLU, which has supported Worthy's claim from the beginning, will take the matter to court if necessary.

The Union believes that the fundamental issue at stake in this case is the right of American citizens to travel abroad unless the government has reason to believe that an individual, while in another country, would perform acts which if done in this country would be criminal in nature. This issue, of course, is heightened by the fact that Worthy is a newspaperman and that the restriction placed upon him restricts the freedom of the press.

In the summer of 1957, Patrick Murphy Malin also protested to Secretary Dulles against refusal to validate the passport of Mrs. Eleanor Roosevelt for travel on the Chinese mainland.

*Passport for a Lawyer.* The attorney representing the Powells and Schuman in their sedition case (see above, p. 14), sought to go to China to gather evidence and take depositions important for the defense of his clients. The Immigration Service refused permission but a federal judge in effect appointed the attorney an officer of the court and ordered him to make the trip and obtain the necessary material. Before the matter could be finally settled in this country the issue was closed by the refusal of Chinese officials to permit the lawyer to enter the country in any status other than as a U.S. Government official—thereby requiring surrender of his passport.

*Passport Application Questions.* Corliss Lamont, writer and teacher, has refused to answer passport application questions relating to present or past membership in the Communist Party. He states: "I take this position because I believe that every American has a natural right to travel, regardless of his political or economic views, and because I believe it is unconstitutional for the U.S. State Department to ask passport applicants such questions and require answers." He has brought suit against the Secretary of State; the ACLU will file a friend-of-the-court brief upholding Lamont's constitutional right.

Prior to the general requirement which will be tested by the Lamont case, answers were refused by Rockwell Kent, the artist, and Dr. Walter Briehl, a physician. A Federal Court of Appeals, in 1957, voted 5-3 to uphold the denial. The prevailing majority opinion considered several questions: 1—the nature of the Communist Party—held to be an "international conspiracy . . . a threat to the internal security of this country," 2—the authority of the government in foreign affairs, 3—the right to travel—circumscribable by the existing emergency—"the Secretary may preclude potential matches from the international tinder box," 4—the nature of a passport—"A tool with which the Department of State can prevent the presence of any American citizen in a foreign country." The ACLU will in these cases also seek to file a brief in the U.S. Supreme Court.

*Kafka-Alvarez Cases.* The Colorado Civil Liberties Union is active in the constitutional issues raised by the attempted deportations of three persons long resident in Denver whom the government seeks to deport to Mexico on grounds of alleged membership in the Communist Party. The ACLU brief before the Board of Immigration Appeals contends that: 1—membership in a subversive organization is not in and of itself constitutionally sufficient to support a deportation order, 2—that evidence about membership consisting of testimony only from paid informers is not sufficient to support a finding of membership, 3—that attendance at “closed” Communist Party meetings is not a sufficient ground where no standard of “closedness” is given, and 4—that records of payments of “dues” must be clearly discernible as such.

The United Packing House Workers of America have come to the defense of John Janosco, a union field representative, whom the government seeks to deport under the McCarran-Walter Act because of alleged membership in the Socialist Workers Party. This is believed to be the first attempted deportation on this particular ground.

*Doo Sik Shynn.* A 60-year old native of Korea who has lived in the United States since 1920 found himself subject to deportation proceedings under the Immigration and Nationality Act which defines “world Communism” as “a revolutionary movement the purpose of which is to establish eventually a Communist totalitarian dictatorship. . . .” Shynn admitted his belief in the philosophical teachings of Marxism but said that he did not consider himself a Communist. The Board of Immigration Appeals ruled favorably noting that Shynn’s “disagreement with the policies and personalities of the Communist Party made it impossible for him to ask for membership in the Communist Party.”

## 2. Problems of Military Personnel

*The Harmon Case.* The American Civil Liberties Union is particularly happy to learn that the U.S. Supreme Court will this fall consider the case of John H. Harmon, III, which raises the question of the Army’s reliance on a soldier’s pre-induction activities in deciding the type of discharge he will receive. In this instance it was charged that the soldier had “subversive” associations, including his father and step-mother, that he was employed by the Detroit Urban League, that he registered to vote as a member of the American Labor Party, and that he solicited money for persons under indictment for violation of the Smith Act. Harmon first received an undesirable discharge which was later modified to a general discharge under honorable conditions; this improvement could, however, still deny Harmon substantial veteran’s benefits under New York law. The ACLU has actively supported this case in both the administrative and judicial tribunals.

*Military Reserve Decisions.* Dr. Robert E. Greenberg, a Detroit physician, has had his application for a commission rejected by both the Army and Navy on security grounds; his appeal is now before the Secretary of the Army. It is alleged that Greenberg was a member of the Labor Youth League (which he denies), and that while a student at the University of California he attended "leftist" rallies. The Metropolitan Detroit Branch of the ACLU helped Greenberg to obtain counsel.

Southern California ACLU notes with disapproval the fact that an Army reservist received an honorable discharge bearing the statement "AR 604-10 applies." This quote applies to the Army security regulation and its presence on the man's papers constitutes a qualification of the honorable discharge.

*Correction of Discharges.* Irving Ferman, Washington office director of the ACLU, testified before a House Armed Services Subcommittee endorsing a proposal to correct unfavorable type discharges on the basis of good conduct after release from the service. In testifying, Ferman made clear the unalterable opposition of the ACLU to military consideration of pre-induction activities in determining a type of discharge, and also suggested improvements in language so that there would be no possible interpretation which would permit military consideration of lawful post-discharge political or intellectual activity.

On several other occasions the ACLU has felt called upon to press for a speeding-up of Army security case determinations. There is considerable evidence of prolonged delay.

## **DUE PROCESS: LEGISLATIVE INVESTIGATING COMMITTEES**

*The Beck Hearings.* In a letter to Senator John L. McClellan, chairman of a special Senate Select Committee, Patrick Murphy Malin stated that in the ACLU's opinion the Committee's interrogation of Dave Beck had been marked by occasional lapses in fair procedure which were violative of due process. Malin was particularly concerned about the recalling of Beck as a witness subsequent to his indictment by a federal grand jury for income tax invasion, and by the fact that, after Beck refused to testify about alleged misuse of union funds, Senator McClellan said: "I don't know any word to describe it less than theft." Malin said these examples raised the disturbing question of the Committee's functioning as a judicial body whose purpose is to convict, rather than a legislative body whose purpose is to gain information to assist in the framing of legislation . . . "we do not believe it is within the purview of Congressional committees to make findings of guilt or innocence."

At the same time, the ACLU rejected Beck's complaint that the hearings being held by the AFL-CIO on the ethical practices of the Teamster's Union were violative of due process. The Teamster's Union was provided with a detailed summary of charges; these were not based on alleged "secret evidence" but drawn from published materials.

**House Un-American Activities Committee.** ACLU affiliates in Chicago, Los Angeles, and San Francisco protested hearings in those cities held by the House Un-American Activities Committee. The hearings centered on persons challenging the McCarran-Walter Immigration Act and also involved subpoenas to produce certain documents. The Illinois Division noted that a subpoena called upon an individual to bring all "letters, copies of letters and all leaflets and documents . . . designed to revise, repeal, and influence the revision or appeal" of the McCarran-Walter Immigration Act, the Smith Act and the Internal Security Act; also demanded were excerpts from minutes of all meetings with the First Amendment protection "for a redress of grievances." The Board of Governors of the State Bar of California in March, 1957, addressed a severe protest to the Speaker of the House of Representatives, the Chairman and counsel of the House Un-American Activities Committee and to each Representative and Senator from the State of California condemning the proceedings of the HUAC and the conduct of that Committee's counsel as "improper and lacking in the dignity and impartiality which govern the conduct of agencies of the United States." It was noted that counsel appearing for witnesses were not allowed to address the Committee or to object to the manner in which the proceedings were being conducted; one attorney was referred to by the committee counsel as "comrade;" attorneys making formal objections for the record were ejected from the hearing although in the opinion of the State Bar they were not "disrespectful, unruly or boisterous." The California Bar referred to "grossly offensive" remarks which were "of such a character . . . [as to pose] a threat to the right to appear by counsel and to the proper independence of the Bar."

In the Spring of 1957 a movement developed within the House to redefine the mandate of the HUAC and to transfer its activities to a subcommittee of the Judiciary Committee. This movement has gained impetus from the decision in the Watkins case, which barred "exposure" as a legislative investigating committee function. The ACLU would generally support such a transfer but does not believe the problem will be solved until investigating committees take a more responsible view of their work and curb the improper interests and activities of staffs which serve them.

## V. INTERNATIONAL CIVIL LIBERTIES

Despite momentous world events affecting the United States in relation to democratic liberties—the Hungarian revolution, the invasion of Egypt, the threatened prestige of the United Nations—the policies of our government toward the protection and extension of those liberties have remained almost unchanged. Cold war tactics combined with the legal isolationism represented by the "Bricker" forces in the Senate have made the United States hesitant to promote internationally the principles it professes. A few recent indications, however, offer hope for a more internationally-minded response in the future.

*First.* The admission of more than 36,000 Hungarian refugees as parolees under the emergency powers of the President was the first case of their use prompted by overwhelming indignation at the Soviet suppression of the Hungarian revolution.

*Second.* The long refusal of the State Department to support any international convention on human rights was broken by its announcement that the United States would be a party to the convention on forced labor drafted by the International Labor Organization. How far this is a change in general policy remains to be seen.

*Third.* The U.S. Supreme Court in the case of trials by military courts abroad laid down principles concerning the treaty power in relation to the Constitution which appear to knock the ground from under one of the strongest arguments of the Bricker advocates in the Senate.

These may seem slight evidences, but they point in two directions toward a change in American attitudes to a concept of world law,—international treaties for human rights with accountability to world agencies, and restoration of the American policy of offering a haven to refugees from foreign tyrannies,—at least when they are Communist,—despite generally tight exclusion laws.

The obstacles to the extension of international civil and political liberties remain, like those affecting all human rights, in the conflicts between Communist and non-Communist nations, between the colonial powers and dependent peoples struggling for national freedom, in the resistance of sovereign states to any interference by international agencies in their domestic affairs, and in the lack of any independent jurisdiction of any sort by the United Nations. If concern for human rights is greater throughout a large part of the world, as it undoubtedly is, it has yet to find expression in more concrete international forms than studies, surveys, reports, debates, moral pronouncements, treaties pledging adherence to fixed standards, and the protests and appeals to world agencies by those who claim to have been denied rights set forth in the Universal Declaration.

Despite the immense influence of the United States and its commitment to the United Nations as the major instrument of its foreign policy, it cannot be said that it has moved during the last year to overcome the obstacles to wider observance of those liberties to which all genuinely democratic countries are obligated, and which constitute the heart of democracy's claim against totalitarianism.

## ***AT THE UNITED NATIONS***

The obligations of all member States of the United Nations under Charter provisions which deal with human rights are to encourage the self-government or independence of all peoples, to the abolition of discrimination based on race, religion, sex or nationality, and democratic liberties generally. Together these objectives are those embodied in the principles which govern the activities of the American Civil Liberties Union, and on which the Union expresses its position to the United States delegation as occasion prompts.

American policy on self-government or independence of colonial peoples is still dictated by cold war strategy in support of the European colonial powers, reluctant to yield their colonial possessions. Even in the Trusteeship Council with international accountability, the United States usually votes with the European powers. The exceptions have been mainly in urging target dates for the completion of stages on the road to self-government or independence. American policy does not concede the right of the General Assembly to decide when a dependent country becomes in fact self-governing, nor does it support the Assembly's authority to require member States to declare whether they have any non-self-governing countries on which to report. Such positions obviously play into the hands of the European colonial powers. The Union has protested them without getting more than a regretful admission of the necessity of not offending our NATO allies.

In the field of its own responsibilities the United States position on dependent peoples in the Pacific and Caribbean Islands is in conformity with UN Charter obligations and the resolution of the Assembly on reports.

Law for civil and political liberties through the UN has made no progress in the last year. The human rights covenants are bogged down in debates over their numerous provisions, with the prospect of completion for Assembly action in 1958. Freedom of international information by press, radio and newsreels, once a major United States concern, has taken on a bit of life following years of debate which only confirmed the impasse between the advocates of freedom and of restriction. A review, supported by the United States, and encouraged by the Union, is under way to see where the UN goes from zero.

Advisory services for human rights, advocated by the United States,

are being organized in countries which ask for them, notably in the form of small seminars on specific problems. Reports on human rights, both general and specific, also urged by the Assembly on initiative by the United States, are coming in, to be used as the basis for examination and debate with a view to making the best practices more uniform. A special study on arrests, detention and exile, proposed by the United States, is under way, on which the Union is helping to gather information in the United States, as it has in previous UN studies.

The effect of all these studies and discussion is not only to keep alive the goals of the Universal Declaration but to bring pressure on countries to live up to them. It is a slow process, made more laborious because the UN declines to consider or even circulate to member States the hundreds of complaints of violations it receives,—except from the trust territories, or when a member State formally inscribes a major complaint on the Assembly agenda.

### **THE BRICKER AMENDMENT**

While the constitutional amendment proposed by Senator Bricker for many years now has not come to vote, it acts as a barrier to the submission by the State Department to the Senate of any international treaty which affects our domestic laws. Various versions of it all have one object, to assert the supremacy of the Constitution over treaty law when the two conflict, and to protect the rights of the States against encroachment by the federal government through powers derived from treaty obligations. Thus the United States has refused to consider being a party to many UN treaties—on slavery, the political and other rights of women, etc.

But a break was made when the Administration, under pressure from the trade unions and the Department of Labor, decided to take part in drafting a treaty against forced labor in Geneva in June, 1957. The United States as the originator of the movement against forced labor, aimed primarily at practices in the "Peoples Democracies," had been in an impossible political position in refusing to follow through, especially after the Soviet Union and other "Peoples Democracies" had expressed their intention of signing such a document. The treaty was adopted, but it remains to be seen whether the State Department will submit it. It is also uncertain whether this decision is an exception or whether it represents what the Union and others have urged; a policy by the State Department to submit any treaty it approves and to let the Senate take the responsibility for action.

The ground appears to have been somewhat cleared for such an advance by a decision of the U.S. Supreme Court in June, 1957 in a case (*Reid v. Covert*) involving trials of American citizens abroad in our military courts under agreements with foreign countries. The

Supreme Court declared that "no agreement with a foreign nation can confer power on the Congress, or on any other branch of government, which is free from the restraints of the Constitution. . . . There is nothing new or unique about what we say here. This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty."

Despite the clarity of the court's language Senator Bricker still maintains that the court might change its view, since the decision was rendered by only four judges and in the Senator's view, was "politically-motivated" and "gratuitous." But other Senators appear to accept the decision as disposing of much of the Bricker argument.

### ***ADMISSION OF ALIENS***

Restrictive immigration laws, based on racial concepts and political tests, yielded when the President invoked emergency powers to admit 36,000 refugees from Hungary, fleeing to Austria when the Soviet government suppressed the democratic revolution by arms. But admission was stopped when Congress convened in order to give it a chance to consider the President's action. Thus several thousand refugees in Austrian camps are unable to immigrate until Congress acts. While the movement to liberalize the restrictive law, supported by the Union, is apparently gaining strength, thousands of refugees wait—not only the Hungarian in Austria and Yugoslavia, but thousands of Jews and other expelled from Egypt following the invasion.

No new issue of exclusion of visitors to the United Nations has arisen, though restrictions by the Attorney General on those "otherwise inadmissible" still stand—confined, when admitted, to a narrow Manhattan area with a ban on speeches or interviews.

Finger-printing of alien visitors required under the McCarran-Walter Act of 1950 was relaxed by Congressional action which gave the Secretary of State and the Attorney General discretion to waive it. It is expected that the change in law will promote wider cultural and educational exchanges between the United States and "Iron Curtain" countries. The Union has consistently opposed the finger-printing requirement.

### ***UN EMPLOYEES***

No change has been made in the U.S. policy of screening for loyalty all employees of international agencies by a special Presidential board. Since all present employees have been screened, the system now covers only applicants, who by agreement must secure a U.S. clearance before employment. Despite the acknowledged fact that no security issue is involved in employment, the government persists in its loyalty pro-

gram, presumably for fear of more severe Congressional action, already threatened, if abandoned. The Union has urged abolition of the system.

## UNITED STATES TERRITORIES

*Puerto Rico.* The prosecution of local Communists under the Smith Act was again delayed by agreement between defense and prosecution, awaiting the U.S. Supreme Court decisions in similar pending cases. In view of those decisions, it seems likely that the prosecution will be dismissed. It has little support in Puerto Rico where the Communist movement is slight.

The Commonwealth's own Sedition Act, known as Law 53, aimed at the Nationalist Party, was repealed by the Legislature at the instance of Governor Luis Munoz Marin and a non-partisan group appointed by him which recommended repeal of the act. The dozen or so prisoners held under the law were pardoned.

The Puerto Rico Legislature also adopted a law to finance political parties largely by subsidies from the Treasury in order to remove pressure on civil service employees to contribute to party funds and to avoid dependence on contributions from special interests. Also significant for the development of civil liberties in Puerto Rico was an act passed by the Legislature providing that minority parties shall have representation in municipal councils as they do in the national Legislature, by distributing among them 1/3 of the seats, whether or not they win them by election.

Roger Baldwin continued his advisory services to a commission on civil rights appointed by Governor Luis Munoz Marin, making two trips to Puerto Rico to confer with officials.

*Virgin Islands.* The Commission appointed by the Legislature to recommend to Congress revision of the Organic Act in order to confer greater home-rule on the islands, engaged Professor Carl J. Friedrich of Harvard to make a report, which he submitted in the spring of 1957. It was unanimously endorsed by all parties as the basis for a revision of law. A new act is being formulated for consideration by Congress in 1958. Roger Baldwin assisted with a visit to the islands for conferences with the legislature, and to organize mainland support when the bill is introduced in Congress.

*Pacific Islands.* The administrations of Samoa, Guam and the Pacific Trust Territory raised no questions calling for action by the Union during the year. Contacts were maintained with officials and with our representatives in all three areas. No new legislation is under consideration. The reports to the United Nations on all United States territories were favorably received without adverse comment.

## *THE RYUKYU ISLANDS*

The military administration of Okinawa and the adjacent islands in the Ryukyu group was unchanged during the year despite continuing protests by Japanese authorities, press and organizations, and repeated appeals to the Defense Department from the Union. Military government remains completely authoritarian; a so-called new order by President Eisenhower in the spring of 1957 merely reaffirmed previous authority, leaving the military commander supreme. Any act of the local legislature may be vetoed by him, any official removed, any order cancelled. Since his action is subject to review and reversal in Washington, the Government contends that his powers are not absolute; but experience shows that a field commander is rarely reversed. Land acquisition for military purposes goes on under protest by the dispossessed; wage differentials for the same work still exist between natives and imported labor.

While the Union does not support the major claim of the islanders and of Japan for immediate reversion to Japan, as provided ultimately in the peace treaty, we shall continue to insist on full native self-government, limited only by demonstrated needs of military security.

---

The Union's international work continues to be handled by Roger Baldwin in consultation with a standing committee header by Professor Robert M. MacIver, with Dorothy Kenyon as vice-chairman. Affiliation has continued with the International League for the Rights of Man, accredited as a consultant by the United Nations, and with the Conference Group of United States Organizations on the UN in relation to the United States delegation. Activities concerning United States territories are carried on by Mr. Baldwin in consultation with a Committee on Civil Liberties in United States Territories headed by Adolf A. Berle, Jr.

# STRUCTURE AND PERSONNEL

## MEMBERSHIP

A member of the Union shall be a person or organization paying dues of two dollars or more annually to the national American Civil Liberties Union or one of its affiliates. The National Committee is elected by the members of the Union, and the Board of Directors is elected by the members of the Board of Directors, the National Committee, and the members of the boards of affiliates.

### Corporation Officers

*Chairman*—Ernest Angell  
*Secretary*—Katrina McCormick Barnes  
*Assistant Secretary*—Rowland Watts  
*Treasurer*—B. W. Huebsch  
*Assistant Treasurers*—John F. Finerty  
Patrick Murphy Malin  
Jeffrey E. Fuller  
*Executive Director*—Patrick Murphy Malin

### Personnel Changes

*Board of Directors.* Six of the members listed in the 1955-56 Annual Report are not now on the Board: Professor Frey who resigned in November 1956, Mr. Kempton who resigned in April 1957, Professor Padover who resigned in May 1957, because their work prevented their attendance at meetings; Mr. Earl Brown who was not renominated in 1957; Mr. White who was elected to the National Committee in 1956, and Professor Chalmers who was nominated to the National Committee in 1957. The following eleven new members were elected:

Lisle C. Carter, Jr.—attorney  
William A. Delano—attorney  
Julian E. Goldberg—attorney  
August Heckscher—president, Twentieth Century Fund  
Frank S. Horne—executive director, New York City Commission on Inter-Group Relations  
Dan Lacy—managing director, American Book Publishers Council  
Walter Millis—consultant to the Fund for the Republic  
Gerard Piel—publisher, *Scientific American*  
George Soll—attorney  
Howard Whiteside—attorney  
Edward Bennett Williams—attorney

The Board now numbers 34 of a maximum of 35 provided under the Constitution.

Because of a Board rule that Vice Chairmen may serve only 2 consecutive years, there have been three changes in officers since the 1955-56 *Annual Report*: Ralph S. Brown was elected Vice Chairman at the 1956 Annual Meeting of the Corporation on the retirement of J. Waties Waring; Elmer Rice and Norman Thomas were elected at the 1957 Annual Meeting on the retirement of Morris L. Ernst and Dorothy Kenyon.

**National Committee.** Three members listed in the 1955-56 *Annual Report* are not now on the Committee: Abram L. Harris who was not recommended in 1956, Dr. William Lindsay Young whose term expired in 1956, Bishop Edward L. Parsons who was elected Vice Chairman Emeritus by the Board of Directors in April 1957. The following five new members were elected in 1956:

Catherine Drinker Bowen—author

John Mason Brown—dramatic critic

James Kerney, Jr.—editor, *Trenton Times*

Stanley Weigel—attorney

William L. White—editor, *Emporia (Kansas) Gazette*

The National Committee now numbers 79 of a maximum 100 provided under the Constitution.

## ACLU AFFILIATES

*California:* ACLU OF NORTHERN CALIFORNIA,\* 503 Market Street, San Francisco 5. John Henry Merryman, Chairman. Ernest Besig, Director. Chapter in Marin County.

SOUTHERN CALIFORNIA BRANCH, ACLU,\* 2863 West Ninth Street, Los Angeles 6. Robert S. Vogel, President. Eason Monroe, Executive Director. Chapters in Culver City-Inglewood, Hollywood, Long Beach, Northeast Los Angeles, Pasadena, San Diego, San Fernando Valley, West San Gabriel Valley, Whittier, and Wilshire District of Los Angeles.

*Colorado:* COLORADO BRANCH, ACLU,† 1870 Broadway, Denver 2, William F. Reynard, Chairman. Harold V. Knight, Executive Director. Chapter in Boulder.

*Connecticut:* CONNECTICUT CIVIL LIBERTIES UNION, 11 Gertrude Lane, West Haven. Ralph S. Brown, Jr., Chairman. Mrs. Roy Mersky, Secretary. Chapters in Fairfield County, Hartford and New Haven.

*Florida:* ACLU OF GREATER MIAMI. Prof. Richard C. Royce, Chairman. Dr. A. Richard Finchell, Olympia Building, Miami, Secretary.

*Illinois:* ILLINOIS DIVISION, ACLU,\* 19 South LaSalle Street, Chicago 3. Robert T. Drake, Chairman. Kenneth Douty, Executive Director.

*Indiana:* INDIANA CIVIL LIBERTIES UNION,† 635 North Pennsylvania Avenue, Indianapolis 4. Sigmund Beck, Chairman. Mrs. Ruth Smith, Executive Secretary. Chapters in Bloomington, Gary, Lafayette and South Bend.

*Iowa:* IOWA CIVIL LIBERTIES UNION. Kenneth Everhart, Chairman. Mrs. Luther Glanton, Jr., 926 Ninth, Des Moines, Secretary.

*Kentucky:* KENTUCKY CIVIL LIBERTIES UNION. Patrick S. Kirwan, Chairman. Arthur S. Kling, 1917 Maplewood Place, Louisville 5, Secretary.

*Louisiana:* LOUISIANA CIVIL LIBERTIES UNION. George A. Dreyfous, 1609 National Bank of Commerce Building, New Orleans, President.

*Maryland:* MARYLAND BRANCH, ACLU. Dr. H. Bentley Glass, President. Stanley Sollins, 817 Fidelity Building, Baltimore 1, Acting Secretary.

*Massachusetts:* CIVIL LIBERTIES UNION OF MASSACHUSETTS,\* 41 Mount Vernon Street, Boston 8. Albert Sprague Coolidge, Chairman. Luther K. Macnair, Director. Chapters in Hampden, Hampshire and Worcester Counties.

*Michigan:* METROPOLITAN DETROIT BRANCH, ACLU. Rev. Edgar M. Wahlberg, Chairman. Walter Bergman, 2747 Oakman Court, Detroit 38, Secretary.

LANSING CIVIL LIBERTIES UNION. Clarence W. Muehlberger and Orion Ulrey, Co-Chairmen. Milton Rokeach, 1008 Lantern Hill Drive, East Lansing, Secretary.

---

\* Indicates a full-time office is maintained.

† Part-time office maintained.

*Minnesota:* MINNESOTA BRANCH, ACLU; SOS, TSMc Building, 15th and Washington Avenues S.E., Minneapolis 14. John deJ. Pemberton, Jr., President. Donald G. Paterson, Secretary-Treasurer.

*Missouri:* ST. LOUIS CIVIL LIBERTIES COMMITTEE. Dr. Samuel Guze, Chairman. Miss Gene Krummenacher, 6030 Kingsbury Avenue, St. Louis 12, Secretary.

*New York:* NEW YORK CIVIL LIBERTIES UNION,\* 170 Fifth Avenue, New York 10. Charles A. Siepmann, Chairman. George E. Rundquist, Executive Director. Chapter in Queens.

NIAGARA FRONTIER BRANCH, ACLU. David H. Thielking, 153 Jewett Parkway, Buffalo, Chairman.

*Ohio:* OHIO CIVIL LIBERTIES UNION,\* 740 West Superior Avenue, Cleveland 13. J. Wesley Littlefield, Chairman. Mrs. Martha Thomas, Executive Secretary. Chapters in Cincinnati, Cleveland, Columbus, Dayton, Oberlin, Toledo, Yellow Springs and Youngstown.

*Oregon:* ACLU OF OREGON, P.O. Box 774, Portland 7. Judah Bierman, Chairman. Jonathan U. Newman, Secretary.

*Pennsylvania:* ACLU OF PENNSYLVANIA,\* 260 South 15 Street, Philadelphia 2. Alexander H. Frey, President. Spencer Coxe, Executive Director. Chapters in Pittsburgh, Harrisburg, Lancaster County, and York County.

GREATER PHILADELPHIA BRANCH, ACLU,\* 260 South 15 Street, Philadelphia 2. Henry W. Sawyer, III, President. Spencer Coxe, Executive Director.

*Washington:* STATE OF WASHINGTON CHAPTER, ACLU,† 1114 Thirty-seventh Avenue North, Seattle 2. Rev. Ben Bradford, Chairman. R. Boland Brooks, Executive Secretary. Chapter in Tacoma.

*Wisconsin:* WISCONSIN CIVIL LIBERTIES UNION, 408 West Gorham Street, Madison 3. Morris H. Rubin, Chairman. Mrs. Esther Kaplan, Executive Secretary.

---

\* Indicates a full-time office is maintained.

† Part-time office maintained.

## STATE CORRESPONDENTS

(In states and territories where the Union does not have organized local branches, these correspondents assist the ACLU by securing information and giving advice on local matters. They do not represent the Union officially.)

*Alabama*—Morrison B. Williams, Route 1, Box 15, Autaugaville  
*Alaska*—Victor Fischer, 1601 F Street, Anchorage  
*Arizona*—C. M. Wright, 262 North Meyer Avenue, Tucson 1  
*Arkansas*—Mrs. Frances Eliot, 204 East C Avenue, North Little Rock  
*Delaware*—William Prickett, 1310 King Street, Box 1329, Wilmington 99  
*Georgia*—William V. George, 47 Oak Street, Forest Park  
*Hawaii*—Miss Mildred Towle, 431 Namahana Street, Honolulu  
*Idaho*—Alvin Denman, Idaho Falls  
*Kansas*—Raymond Briman, New England Building, Topeka  
*Maine*—Prof. Warren B. Catlin, Bowdoin College, Brunswick  
*Mississippi*—Jo Drake Arrington, 411 Hawes Building, Gulfport  
*Montana*—Leo C. Graybill, 609 Third Avenue North, Great Falls  
*Nebraska*—Prof. Frederick K. Beutel, University of Nebraska, Lincoln  
*Nevada*—Martin J. Scanlan, 130 South Virginia Street, Reno  
*New Hampshire*—Winthrop Wadleigh, 45 Market Street, Manchester  
*New Jersey*—Emil Oxfeld, 744 Broad Street, Newark 2  
*New Mexico*—Edward G. Parham, 124 Richmond Drive, S.E., Albuquerque  
*North Carolina*—James Mattocks, Professional Building, High Point  
*North Dakota*—Harold W. Bangert, 400 American Life Building, Fargo  
*Oklahoma*—Rev. Frank O. Holmes, First Unitarian Church, Oklahoma City  
*Puerto Rico*—Guillermo Cintron Ayuso, P.O. Box No. 4566, San Juan  
*Rhode Island*—Milton Stanzler, 1019 Hospital Trust Building, Providence 3  
*South Carolina*—John Bolt Culbertson, P.O. Box 1325, Greenville  
*South Dakota*—Benjamin Margulies, 418 Western Surety Building, Sioux Falls  
*Tennessee*—James J. La Penna, 512 Commerce Union Bank Building, Nashville  
*Texas*—Prof. Clarence E. Ayres, University of Texas, Austin 12  
*Utah*—Adam M. Duncan, 223-5 Phillips Petroleum Building, Salt Lake City  
*Vermont*—Louis Lisman, 166 College Street, Burlington  
*Virgin Islands*—George H. T. Dudley, Box 717, Charlotte Amalie, St. Thomas  
*Virginia*—Moss A. Plunkett, Box 492, Roanoke  
*West Virginia*—Horace S. Meldahl, P.O. Box 1, Charleston  
*Wyoming*—Rev. John P. McConnell, 408 South 11th Street, Laramie

## MEMBERSHIP AND FINANCES

*Fiscal Year February 1, 1956, through January 31, 1957*

For the tenth year in a row, the membership of the ACLU and its integrated affiliates showed an increase: this time from 35,000, at the start of the fiscal year, to 38,000 at the end, a net rise of eight per cent. The ACLU of Northern California, which maintains its membership separately, had about 3000 members of its own, many of whom belonged individually to the national organization. Thus probably 40,000 members were enrolled in the Union as a whole on January 31, 1957.

Membership income during the twelve-month period totalled almost \$355,000, a 9% rise over the 1955-56 total. Including other items, current income added up to \$368,000—about \$50 more than the year's expenditures. Along with this small surplus, over \$13,000 in bequests was added to the reserve. However, close to \$4600 of the Union's February 1, 1956 Net Worth had to be removed from the list of assets when it was discovered that the two mortgages constituting this asset had been satisfied in 1939 and 1948 respectively, and that thus the carrying of this sum among the Union's investments since then had been an error. After deducting this \$4600, the Union's Net Worth totalled \$79,900, compared with \$71,300 at the start of the year.

The average member contributed \$9.35. Some 15% of the ACLU's members contributed less than \$5, 50% between \$5 and \$9, 30% between \$10 and \$24, 3% between \$25 and \$49, 1% between \$50 and \$99, and 1% \$100 and over. Members investing \$200 or more in the Union's work during the 1956-57 fiscal year were:

Samuel Abels, Indiana; William Prescott Allen, Texas; Amalgamated Clothing Workers of America, New York; Ralph B. Atkinson, California; Mr. and Mrs. John P. Axtell, New York; Mrs. Evelyn Preston Baldwin, New York; Mrs. Katrina McCormick Barnes, New York; Howard K. Beale, Wisconsin; Mrs. Helen Beardsley, California; Mr. and Mrs. Harry Braverman, California; Miss Julia C. Bryant, Connecticut; Andrew H. Burnett, California; Mrs. Esther Smith Byrne, California; Henry B. Cabot, Massachusetts; Mr. and Mrs. Roger S. Clapp, Massachusetts; Miss Fanny Travis Cochran, Pennsylvania; Edward T. Cone, New Jersey; Professor and Mrs. Albert Sprague Coolidge, Massachusetts; Rev. Stephen T. Crary, Massachusetts; Mrs. Margaret DeSilver, New York; Mrs. Frances R. Dewing, Massachusetts; the late Mrs. Thomas M. Dillingham, California; Robert T. Drake, Illinois; Edward J. Ennis, New York; Henry G. Ferguson, District of Columbia; Mrs. Stanton A. Friedberg, Illinois; Miss Gloria Gartz, California; Sidney Gerber, Washington; Morris Goodman, Indiana; Herbert G. Graetz, Massachusetts; Richard Grumbacher, Maryland; Mr. and Mrs. Gilbert Harrison, District of Columbia; Mr. and Mrs. George H. Hogle, England; Mrs. J. M. Huber, New Jersey; B. W. Huebsch, New York; International Ladies Garment Workers Union, New York; Mrs. Sophia Yarnall Jacobs, New York; Mrs. William Korn (for the Mayer Family), New York; Dr. Austin Lamont, Pennsylvania; Robert Maxwell Lauer, Delaware; Senator Herbert H. Lehman, New York;

Alan Jay Lerner, New York; Mrs. Moritz J. Loeb, Illinois; W. F. Lorey, California; Mr. and Mrs. Patrick Murphy Malin, New York; Charles E. Merrill, Jr., France; Mr. and Mrs. R. A. Meyer, Illinois; William Miles, Jr., California; Merle H. Miller, Indiana, Mrs. Walter C. Paine, Vermont; Dr. Linus Pauling, Jr., Territory of Hawaii; Miss Annie J. Pitou, California; Dr. Dallas Pratt, New York; George D. Pratt, Jr., Connecticut; Mrs. Jane A. Pratt, Connecticut; H. Oliver Rea, New York; Virginia Reeves, Italy; Mr. and Mrs. Chester Rick, New York; Miss Charlotte Rosenbaum, Illinois; Mrs. Alice F. Schott, California; A. Joseph Seltzer, Michigan; Henry W. Shelton, California; Mr. and Mrs. Herbert Sieck, Illinois; Mrs. Eleanor Lloyd Smith, California; Lloyd Melvin Smith, California; Mrs. Duncan M. Spencer, New York; Dr. and Mrs. John Spiegel, Massachusetts; Bruce D. Stark, Oregon; Mr. and Mrs. Arthur I. Stephens, Illinois; J. David Stern, New York; Ann R. Stokes, Pennsylvania; Percy S. Straus, Jr. Texas; Gaylord H. Streeter, Virginia; Miss Anne L. Thorp, Massachusetts; John Turner, New York; Mr. and Mrs. Frank Untermeyer, Illinois; Mrs. W. P. Van Evera, Minnesota; Philip Wain, California; Mrs. Howard Whiteside, Massachusetts; Duane E. Wilder, Pennsylvania; Mrs. Betty Zukor, California. Five anonymous gifts of \$200, two of \$250 and one of \$500 were also received.

Aside from budgeted operations, the Union supervised the Roger N. Baldwin-ACLU Escrow Account established early in 1956 in place of the former "Baldwin Salary Section," and administered by the Fiduciary Trust Company. Its funds come from the Maxine Hilson Estate, a bequest received by the Union in 1946. The Account registered during 1956-57 a net loss of \$1,656 in book value, with Net Worth standing at \$37,880 on January 31, 1957. However, the market value of securities in the Account rose from \$54,541 at the start of the fiscal year to \$56,599 at the end.

#### 1956-57 MEMBERSHIP ENROLLMENT

NUMBER OF MEMBERS FEBRUARY 1, 1956 .....	35,096
New members enrolled during fiscal year .....	7,057
Dropped: deceased, resigned, delinquent, etc. .....	4,209
<i>Net increase during fiscal year</i> .....	2,848
NUMBER OF MEMBERS JANUARY 31, 1957 .....	37,944

## 1956-57 FINANCIAL REPORT

INCOME	Number	Amount
New members' initial contributions .....	7,057	\$41,626.00
Membership renewals .....	24,978	247,335.33
Special Funds contributions .....	8,126	65,906.80
 TOTAL MEMBERSHIP INCOME .....	40,161	\$354,868.13
 Investment income, <i>net loss</i> .....		190.64
Executive Director's honorariums .....		2,234.66
Sale of pamphlets .....		4,140.83
From ACLU-Roger N. Baldwin Escrow Account .....		3,600.00
ACLU share of NYCLU Theatre Benefit .....		3,350.61
 TOTAL, CURRENT INCOME .....		\$368,003.59
 Bequests from the estates of former members:		
Charles M. Hepler .....		\$11,994.95
Edith R. May .....		1,000.00
Samuel H. Gellman .....		100.00
William W. Norton .....		66.02
 TOTAL, ALL INCOME .....		\$381,164.56

## EXPENDITURES

### GENERAL ADMINISTRATION

SALARIES, five executives, two executive assistants .....	\$51,832.87
SALARIES, fifteen clerical employees .....	50,003.53

### OTHER ADMINISTRATIVE EXPENSES

Postage .....	\$9,534.09
Equipment, supplies, services, etc. ....	7,751.32
Rent .....	6,660.00
Telephone and telegraph .....	3,827.35
Payroll taxes and insurance .....	3,565.96
Stationery .....	3,370.18
Executive Director's travel .....	3,124.64
Lettershop .....	2,049.77
Auditor .....	2,000.00
Books, subscriptions, clippings, etc. ....	1,127.76
Bank charges .....	977.10
Board meetings .....	448.48
National Committee election .....	389.67
 TOTAL .....	\$44,826.32

### MEMBERSHIP SERVICES

New membership recruitment, total expenses .....	\$18,509.21
Civil Liberties (printing costs) .....	5,836.87
Special Funds appeals, total expenses .....	5,304.21
1954-55 Annual Report (printing costs) .....	4,267.05
Separable membership maintenance costs .....	4,020.75
 TOTAL .....	\$37,938.09

# BALANCE SHEET

as of January 31, 1957

ASSETS	
Cash	\$64,495.20
Accounts receivable:	
Airlines deposit	425.00
From Marshall Trust for loyalty-security cases	3,250.00
Overpayments to affiliates	1,361.04
Loans receivable:	
Ohio Civil Liberties Union	2,200.00
Indiana Civil Liberties Union	2,026.23
Illinois Division	2,000.00
Greater Philadelphia Branch	748.00
Civil Liberties Union of Massachusetts	200.00
Furniture and Fixtures	6,000.00
TOTAL ASSETS	\$82,705.47
LIABILITIES	
Accounts payable	\$ 85.80
Withholding taxes payable	1,805.36
Received in advance from Baldwin Escrow Account	600.00
Marshall Trust loyal-security case fund	292.71
TOTAL LIABILITIES	\$2,783.87
NET WORTH	
Net Worth as of February 1, 1956	\$71,282.34
PLUS excess of current income over expenditures	53.29
PLUS bequests received in 1956-57	13,160.97
LESS liquidation of mortgage investments	4,575.00
NET WORTH AS OF JANUARY 31, 1957	\$79,921.60
TOTAL LIABILITIES AND NET WORTH	\$82,705.47

# Roger N. Baldwin-ACLU Escrow Account

NET WORTH, February 1, 1956	\$39,536.68
Income from investments, net	2,543.76
Paid to ACLU for Mr. Baldwin's part-time salary	4,200.00
EXCESS, expenditures over income	\$ 1,656.24
NET WORTH, January 31, 1957	\$37,880.44

## Certificate

In our opinion the accompanying balance sheets and statements of income and expenditures, subject to adjustments for the differences between the book and market value of the securities held, present fairly the financial position of the American Civil Liberties Union, Inc., at the close of business January 31, 1957, and the results of its operations for the fiscal year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

APFEL AND ENGLANDER  
Certified Public Accountants

A copy of the complete auditor's report will be sent on loan to any member on request. The ACLU's financial and accounting methods are endorsed by the National Information Bureau, 205 East 42nd Street, New York 17, N.Y., a private agency organized to help maintain sound standards in philanthropy and to provide contributors with information and advice.

Contributions to the American Civil Liberties Union are not deductible for income tax purposes since the Treasury Department has held that a "substantial part" of the Union's activities is directed toward influencing legislation. The ACLU itself pays no taxes other than Social Security, Old Age Benefit and Workmen's Compensation levies in connection with its employees' salaries.

## ACLU PUBLICATIONS AVAILABLE — DECEMBER 1957

You may order by number from ACLU at 170 Fifth Avenue, New York 10, N.Y. All prices are postpaid. Quantity price schedule, in general: 25 or more copies — deduct 20% from single copy price; 100 or more — deduct 40%. Single copies of any available pamphlets will be mailed free to contributing members (dues of \$5 and up) on request. Please indicate membership category when ordering.

1. The ACLU's 1956-57 Annual Report. 112 pp. 75¢

1-a. 1955-56 Annual Report: LIBERTY IS ALWAYS UNFINISHED BUSINESS. 96 pp. 50¢

1-b. 1954-55 Annual Report: CLEARING THE MAIN CHANNELS, 144 pp. 50¢

1-c. 1953-54 Annual Report: AMERICA'S NEED: A NEW BIRTH OF FREEDOM. 128 pp. 50¢

1-d. 1951-53 Report: WE HOLD THESE TRUTHS: FREEDOM — JUSTICE — EQUALITY. 160 pp. 50¢

2. THE BILL OF RIGHTS (suitable for framing). 1956. 4 pp. Free

4. THE PEOPLE'S RIGHT TO KNOW, A report on government news suppression, by Allen Raymond. 1955. 48 pp. 35¢

(Continued inside back cover)

## Join the American Civil Liberties Union!

ACLU members in these categories receive *Civil Liberties* each month, this 1956-57 Annual Report (and future annual reports), and their choice of pamphlets:

PARTICIPATING MEMBER .....	\$100
COOPERATING MEMBER .....	\$50
SUSTAINING MEMBER .....	\$25
SUPPORTING MEMBER .....	\$10
CONTRIBUTING MEMBER .....	\$5

Associate Members at \$2 receive *Civil Liberties* and the Annual Report. Weekly bulletin is available on request to contributors of \$10 and over.

Members living in the following states and city areas also belong to the respective local ACLU organization, without payment of additional dues: Southern California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Ohio, Oregon, Pennsylvania, Wisconsin and Buffalo, Detroit, Lansing, Miami, New York, Philadelphia, and St. Louis. If you live in one of these states or city areas, your chapter will automatically receive a share of your contribution. The more you give the larger its share. Be as generous as you can!

AMERICAN CIVIL LIBERTIES UNION  
170 Fifth Avenue, New York 10, N.Y.

*The ACLU needs and welcomes the support of all those—and only those—whose devotion to civil liberties is not qualified by adherence to Communist, Fascist, KKK, or other totalitarian doctrine.*

Here is my \$..... membership contribution to the work of the ACLU, fifty cents of which is for a one-year subscription to *Civil Liberties*.

PLEASE PRINT CLEARLY

NAME .....

ADDRESS .....

CITY ..... ZONE ..... STATE .....

Occupation .....

5. THE MARINE CORPS AND OBSERVANCE OF CIVIL LIBERTIES AT PARRIS ISLAND. 1957. 11 pp. 5¢

6. ARTHUR GARFIELD HAYS 1881-1954. Tribute by Roger Baldwin at Hays' services. 4 pp. Free

7. ACADEMIC FREEDOM: SOME RECENT PHILADELPHIA EPISODES. (Philadelphia ACLU). 1954. 36 pp. 25¢

8. ANTI-COMMUNISM AND CIVIL LIBERTIES, by Bishop Bernard J. Sheil. 1954. 6 pp. 5¢

9. IF YOU ARE ARRESTED. Your rights and obligations. 1956. 4 pp. Free

10. THE SUPREME COURT AND CIVIL LIBERTIES, by Osmond K. Fraenkel. 1955. 106 pp. 50¢

10-a. 1957 SUPPLEMENT to THE SUPREME COURT AND CIVIL LIBERTIES, by O. K. Fraenkel. 32 pp. 25¢

11. ACADEMIC DUE PROCESS. ACLU statement on procedures in academic freedom cases. 1955. 8 pp. 10¢

12. ACADEMIC FREEDOM AND ACADEMIC RESPONSIBILITY. Statement of principles. 1956. 16 pp. 10¢

13. CENSORSHIP OF COMIC BOOKS. 1955. 16 pp. 15¢

16. TWENTY QUESTIONS ON CIVIL LIBERTIES. 1957. 2 pp. Free

17. DEMOCRACY IN LABOR UNIONS. ACLU report and policy statement. 1952. 16 pp. 25¢

18. CONFORMITY IN THE ARTS, by Elmer Rice. 1953. 4 pp. 5¢

21. ACADEMIC FREEDOM AND CIVIL LIBERTIES OF STUDENTS. Policy statement. 1956. 12 pp. 10¢

22. "HENCEFORWARD SHALL BE FREE." Excerpts from Emancipation Proclamation, etc. 1956. 4 pp. 5¢

23. COMMUNISM AND CONFORMITY, by George F. Kennan. 1953. 1 p. 5¢

24. HAVE WE THE COURAGE TO BE FREE?, by Arthur Hays Sulzberger. 1953. 8 pp. 10¢

25. CIVIL LIBERTIES AND THE INTERNATIONAL SCENE. 1953. 4 pp. 5¢

26. STRONG IN THEIR PRIDE AND FREE, by Harry P. Cain (A condensation). 1955. 6 pp. 5¢

27. THE FEDERAL SECURITY PROGRAM: SOME PHILADELPHIA EPISODES. 1956. 16 pp. 25¢

28. LEGISLATIVE INVESTIGATIONS. On House Un-American Activities Committee. 1956. 6 pp. Free

29. ACLU STATEMENT OF CENSORSHIP ACTIVITY BY PRIVATE ORGANIZATIONS AND THE NATIONAL ORGANIZATION FOR DECENT LITERATURE. 1957. 4 pp. 5¢

\*  
Published by Others,  
Distributed by ACLU

30. THE TYRANNY OF GUILT BY ASSOCIATION, by Sen. R. L. Neuberger. *Hillman Foundation*, 1955. 11 pp. 5¢

32. IS WIRETAPPING JUSTIFIED?, by Patrick Murphy Malin. From *Annals of American Academy of Political and Social Science*. 1955. 7 pp. 10¢

33. THE ALTERNATIVE, by Archibald MacLeish. *Roger N. Baldwin Civil Liberties Foundation*. 1955. 16 pp. 25¢

34. DILEMMAS OF LIBERALISM; by Francis Biddle. *Baldwin Foundation*. 1953. 24 pp. 25¢

35. THE FIFTH AMENDMENT TODAY, by Dean Erwin N. Griswold. *Harvard University Press*. 1955. 82 pp. 50¢

36. INDIAN RIGHTS AND AMERICAN JUSTICE, by Harold E. Fey. *Christian Century*. 1955. 24 pp. 25¢

38. WHAT YOU CAN'T SEE ON TV, by William Peters. July 1957 *Redbook*. 5 pp. 10¢

40. THE LAW AND THE FUTURE, by Chief Justice. Earl Warren. *Fortune*. 1955. 16 pp. 5¢

41. FAMOUS WORDS OF FREEDOM. Collection of quotable statements. *Freedom House*. 1955. 23 pp. 5¢

44. UNIVERSAL DECLARATION OF HUMAN RIGHTS. *United Nations*. 1948. 8 pp. 5¢

45. IT CAN BE DONE! On ending segregation in public schools. *NAACP*. 1955. 12 pp. 5¢

46. THE CIVIL RIGHTS STORY... 1956, by Theodore Leskes. Progress and setbacks in the minority rights field. *American Jewish Committee*. 40 pp. 20¢

48. PRESENTING THE INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN, with which the ACLU is affiliated. 1952. 6 pp. Free

49. WHAT PROGRESS TOWARD HUMAN RIGHTS? Annual report of the International League for the Rights of Man. 1957. 12 pp. Free

61-190-687

**YOU HAVE AN INTEREST  
IN CIVIL LIBERTIES!  
SO — JOIN\* THE**



## **AMERICAN CIVIL LIBERTIES UNION!**

The ACLU is the only permanent national non-partisan organization defending the Bill of Rights for everyone—without distinction or compromise. It depends on its members for all its funds.

The Union needs and welcomes the support of all those—and only those—whose devotion to civil liberties is not qualified by adherence to Communist, Fascist, KKK, or other totalitarian doctrine.

**See Membership Blank On Page 112**

\*If you already belong, won't you pass this Annual Report on to a friend, when you have finished it, urging him or her to *join the ACLU*.

### **BEQUESTS TO THE ACLU**

During the past seven years the American Civil Liberties Union has received by bequest a total of \$97,700 from the estates of forty different members. The legacies ranged in amount from \$25 to \$25,000.

The Union regards such gifts with special pride and with a special sense of obligation, because this money represents the final dedication of these ACLU members to the preservation of civil liberties in our democracy.

Members desiring to mention the Union in their Wills may wish to use this language: "I give \$..... to the American Civil Liberties Union, Inc., a New York corporation."